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These awards are made possible by an earmarked grant from the Chicago Resource Center. They will be presented at the Fifth International Conference on Drug Policy Reform, November 13-16, 1991, in Washington, D.C. The Foundation is a privately funded, independent forum for drug policy alternatives. To support an open debate on drug policy options, send a tax-deductible contribution today to the Drug Policy Foundation, 4801 Massachusetts Ave., N.W., Suite 400, Washington, D.C. 20016. Telephone: (202) 895-1634. Fax: (202) 537-3007.

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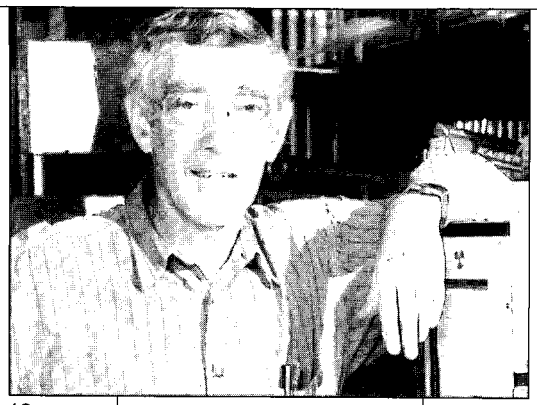
December 1991/Vol. 23, No. 7



18

FEATURE

18 ■ Of Mice and Men: An Interview with Bruce Ames
Virginia I. Postrel
Searching for the causes of cancer.

EDITORIALS

4 ■ Poetic Injustice
Virginia I. Postrel
What's wrong with sexual harassment.

6 ■ Prophylactic Measure
Jacob Sullum
Trojan war.

52

55

ANNUAL BOOK SECTION

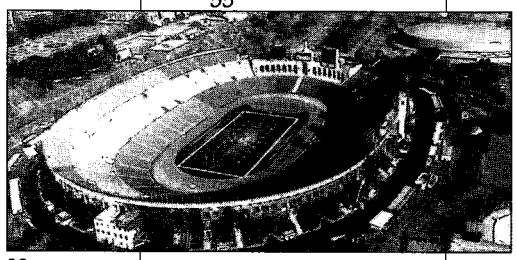
24 ■ Fencing In the Fourth Estate
Michael McMenamin
The impediments to free speech.

28 ■ Cold-Fusion Confusion
Oren Grad
Hoaxers or heroes?

32 ■ Big Girls Don't Cry
Ellen Frankel Paul
Who lost the feminist revolution?

37 ■ Who Cares About Apathy?
Michael Barone
What voters really want.

40 ■ The Fixers
Jacob Sullum
Getting beyond the drug war.



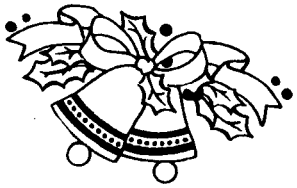
60

DEPARTMENTS

8 ■ Letters

12 ■ Trends

16 ■ Brickbats



45 ■ Money on the Move
Norman Macrae
Global Economics 101.

48 ■ Reversing Discrimination
Steven Hayward
Racial explosions and political evasions.

COLUMNS

52 ■ Washington: Eliot Knessler, FDA
John Hood
Protecting stupid consumers.

55 ■ Music: The New Country
Charles Oliver
Tight jeans and sad songs.

58 ■ Housing: The Unwelcome Wagon Rolls On
William Tucker
Whose backyard is it?

60 ■ Los Angeles: Just Privatize, Baby
Stephen Moore
Keeping the Raiders at home.

63 ■ New York: Asleep at the Switch
Stanton Peele
Will drug testing make public transportation safe?

66 ■ Selected Skirmishes: The Impossibility of Socialism
Thomas W. Hazlett
Sometimes one of those kooky professors gets it right.

Cover photograph by Ron Derhacopian

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POETIC INJUSTICE

VIRGINIA I. POSTREL

It came, as swift and violent as a summer storm, full of sound and fury, sudden booms and awful flashes. And then, just as suddenly, it was over. The Senate voted 52-48. Clarence Thomas became associate justice of the U.S. Supreme Court. Anita Hill returned to the tenured security of Oklahoma. Only the debris remains.

Innocent or guilty, Clarence Thomas bears much responsibility for the storm—and for the debris. The reason lies not in any alleged improprieties but in the ideas and policies he aided and abetted at the EEOC. It was Thomas, after all, who successfully urged Reagan administration Solicitor General Charles Fried to argue before the Supreme Court for a more expansive concept of sexual harassment. The case of Clarence Thomas is a case of poetic injustice.

Based on the testimony of the women who worked for him, I believe Thomas is telling the truth—that, far from graphically discussing sex with his female employees, he deliberately and systematically stifled the unthreatening banter that enlivens many offices. He is, by these accounts, a man who adopted not only in law but also in practice the feminist notion that any mention of sex by a man in front of a woman constitutes potential harassment, an offense equivalent to outright discrimination.

Ultimately, Thomas was saved by his obsession with propriety and by his accuser's behavior toward him—behavior that suggested friendship rather than fear. He was saved. But no one else is safe.

Contrary to the pious pronouncements of Thomas's supporters and opponents alike, the very concept of verbal sexual harassment is dangerous, to men and to women and to free institutions. It is, as Thomas said of the ordeal to which he was subjected, not American.

As Congress turns its attention once again to civil-rights bills that include punitive damages for such harassment, we should take to heart the real lesson of the Thomas hearings. In a country where words are a crime and where innocence must be proved, yet cannot be, the law becomes a tool for the venal and the vindictive. And we are all in peril.

Consider some of the circumstantial evidence brought against Thomas. He had, at times, been alone in an office with Anita Hill. He had, at least in college, watched pornographic films and later entertained friends with humorous accounts of them. Above all, he could bring no witnesses to testify that they had personal knowledge that he had *not* harassed Anita Hill. No one had been with him 24 hours a day. No one could prove the negative. No one ever can.

Thomas's trial was held on national television, and it was, of course, not a real trial. Politics entered in. And the public had a vote. If Thomas was saved by the evidence, he was also saved—as Robert Bork was doomed—by the dependence of Southern Democrats on their black constituents. Those constituents saw the danger and unfairness of Thomas's ordeal. They did not need his outraged cries of high-tech lynching to remind them of two centuries of black men falsely accused of sexual misdeeds.

In this way, Thomas was lucky. He had a jury of 250 million. His hearing wasn't behind closed doors. That was bad for his reputation but good, ultimately, for his future. Most men accused are not so fortunate. Women can hurl unsubstantiated charges, and there will be no Southern senators to protect the innocent.

The courts have imposed a radically subjective standard for what constitutes sexual harassment. It must be "unwelcome." Not threatening. Not intimidating. Simply "unwelcome." If some nerd asks an uninterested woman out more than once, that's harassment. If somebody uses a four-letter word she doesn't like, that's harassment. If someone discusses the Howard Stern show, that's definitely harassment.

If we are going to force the courts to read minds, it would make far more sense to examine the intentions of the accused rather than the mental state of the accuser. To harass someone, after all, is to deliberately give her a hard time. It is teasing combined with malevolent intent and carried to the *n*th degree. But the very act of teasing ought not be a crime, or a career-destroying civil offense.

Feminists like to claim that "sexual harassment is not about sex—it's about power." The truth is a bit more complicated. First, sexual harassment *is* very clearly about sex. Lots of bosses harass their employees in nonsexual ways. They make them run personal errands. They berate them in front of other employees. They play favorites. But these actions are not illegal, nor should they be.

And if sexual harassment is about power, the power works both ways. Women can cry harassment at any time, giving them enormous power to blackmail co-workers or supervisors. Antidiscrimination laws let women push their way into job sites, private clubs, even locker rooms. And, once there, sexual harassment regulations let the most sensitive women force their standards of propriety on their colleagues.

None of this is good for women. The

Scripts by George H. Smith, Wendy McElroy & Jeffrey Hummell.

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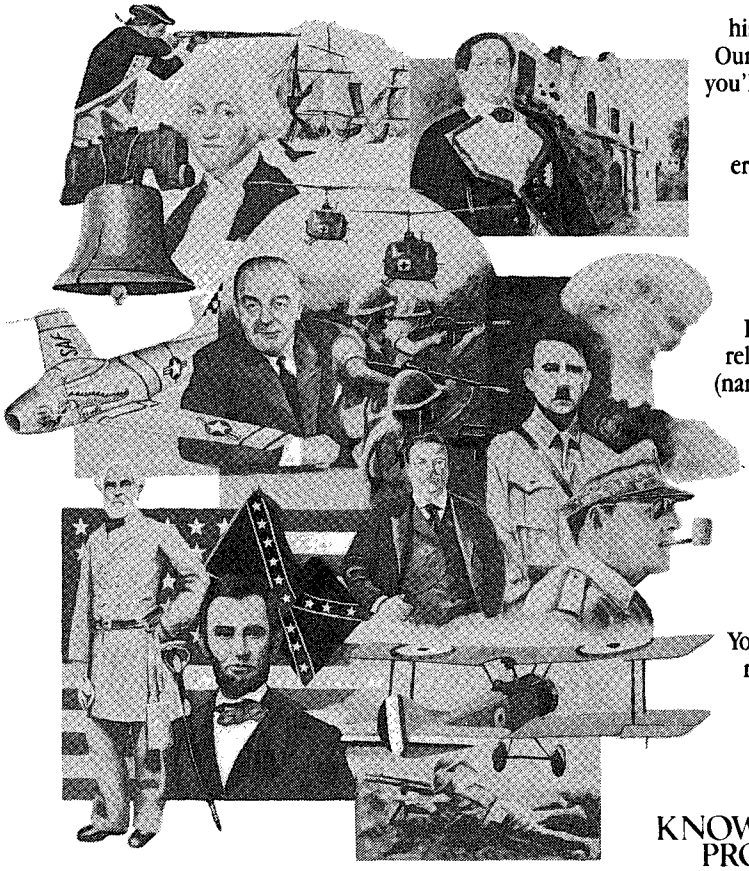

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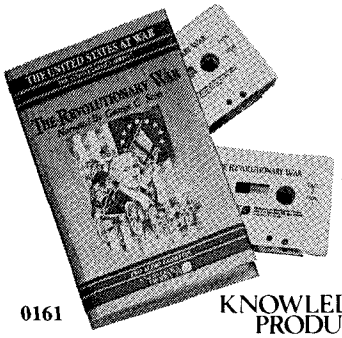

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furor over sexual harassment teaches men that women are simultaneously extremely fragile and extremely dangerous. Any little thing can set us off. And once we're offended, we can ruin your life.

The wise man will, therefore, never be alone with a female colleague, least of all behind a closed door. That means no manager-to-manager discussions of personnel or budgets, no confidences, and no confidence. It means the workplace becomes once again a boys' club, where the real work is done by men and women are there just for decoration.

Feminist theorists picture the ideal workplace as a sterile environment devoid of humor and cut off from employees' social lives. In this brave new world, no one ever dates a fellow employee and no one ever laughs. Everyone just works.

Yet at the same time, every boss spends all his or her time worrying about the emotional states of employees. Workplace mores (and possibly work itself) are determined by the internal state of the least stable and most hypersensitive employee.

During the Thomas hearings, there was much talk of the importance of encouraging women to come forward with sexual harassment charges. Thomas's opponents now wring their hands about how hard the Republicans were on Anita Hill. They didn't treat her like a lady.

And that is as it should be. We should not make it easy to accuse people of wrongdoing. We should not place the burden of proof on the accused, even if they are men. And we should not be indulgent with accusers, even if they are women.

PROPHYLACTIC MEASURE

JACOB SULLUM

In the old days, that little round bulge in your son's wallet came from an older brother, a more-experienced friend, or a gas-station vending machine. In the future, if a new program in New York City's public high schools catches on, the condom might come from his teacher.

Some parents have a problem with this. They say it's not a teacher's business to dispense birth-control devices without their permission. Anticipating a lawsuit, supporters of the condom plan are already formulating their defense, which is likely to depict condom distribution in public schools as a life-or-death issue in the age of AIDS.

This is a red herring. As Michael Fumento demonstrates in *The Myth of Heterosexual AIDS*, the chance of contracting the disease from a heterosexual encounter that does not involve anal intercourse is so small—on the order of 1 in 5 million—that it does not bolster the case for condoms in school. Preventing pregnancy is a much more compelling reason for distributing condoms. About 1 million teenagers become pregnant each year, and half of them give birth; some 80 percent of these births result from unplanned pregnancies.

Parents who object to the condom program should recognize that the issue is not whether teenagers should have access to condoms without Mom and Dad's permission. They already do. For the price of $2.29 and (maybe) a little embarrassment, they can get a package of Trojans at the local drugstore. True, free distribution at school makes things a bit easier. But it's not as if the schools were giving out something that is generally proscribed for minors—say, liquor or pornographic magazines.

From a concerned parent's perspective, the real problem is the implicit moral message that a kid receives when a figure of authority hands him or her a condom. No matter how many caveats are attached to it, that condom communicates an attitude that teenage sex is OK, an attitude that may occasionally be decisive. In any case, it contradicts what many parents teach their children.

State laws and district policies often make allowances for such conflicts between home and school. Indeed, in New York state, students are excused from otherwise mandatory sex- and AIDS-education classes if their parents object on religious grounds. But such concessions can only go so far. It's hard to see how a similar arrangement could be managed with a condom-distribution program.

Opponents might therefore argue that the only way to maintain parental prerogatives is to cancel the condom program. If parents want their kids to have condoms, they can provide them. But this approach is not satisfactory either. Many parents who hesitate to encourage sexual activity by communicating their own approval—or who are simply too embarrassed to discuss birth control with their kids—might still like condoms to be readily available in case their children decide to have sex.

So what's the solution? There is none. The public-school system simply cannot accommodate a diversity of parental concerns. Only a free, competitive market in education can do that. Karen Norlander, an attorney with New York's Education Department, seems to sense this. She told *The New York Times*, "The entire future of public education would be hard pressed if we came to a point where a parent could dictate what the child can learn and what the child can't learn." Just so.

■ In this special book issue, we'd like to extend our congratulations to the three REASON contributing editors who published new books in 1991. James Bovard is the author of *The Fair Trade Fraud* (St. Martin's Press, $24.95); Stanton Peele co-authored *The Truth About Addiction and Recovery* (Simon & Schuster, $22.95); and William Tucker wrote *Zoning, Rent Control, and Affordable Housing* (Cato Institute, $9.95).

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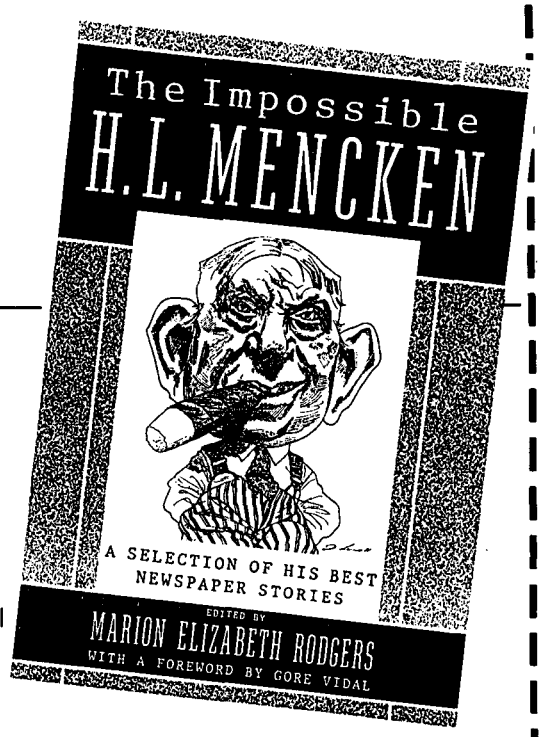

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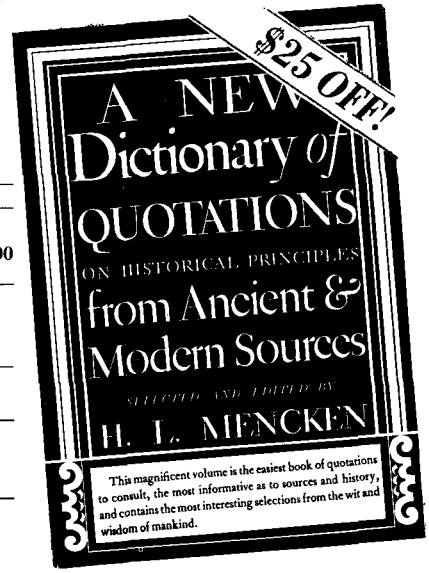
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LETTERS

Rubbish!

Your article on garbage ("Talking Trash," Aug./Sept.) missed the can. The true property-rights approach to environmental issues requires everyone to responsibly dispose of their own waste—i.e., recycle it on their own property or pay someone else to haul it away and recycle it.

Consider disposable diapers. As you correctly point out, government prohibitions and privacy-invading trash police are not the answer. Nevertheless, your position as libertarians ought to be to disapprove of the use of disposables on the grounds that they represent a shortsighted use of environmental capital. The plain fact is that the payload of disposable diapers is human feces, which represent a health hazard to everyone who comes into contact with them. People who throw these things into any handy trash bin are exporting their children's feces into other persons' environmental domain. In no private-property scheme I know of can someone dispose of waste this way.

Publicly provided trash removal is a huge subsidy to the manufacturers and consumers of disposables, who pay only a fraction of the actual cost of disposing infant waste. In a truly private system of waste treatment, they would and should be expected to pay the entire cost. Individuals must keep the environment clean so government won't have cause to regulate it.

Frederick J. Oerther
Department of Economics
Greensboro College
Greensboro, NC

Virginia Postrel and Lynn Scarlett reply: As we argued in our article, garbage-disposal services can and should be provided without subsidies to trash producers. Those producers are not disposable-products manufacturers but the consumers who throw stuff away—whether the stuff is orange peels or disposable diapers. To advocate an end to subsidies is not, however, to advocate the mandatory recycling Professor Oerther seems to favor. Nor is it to know in advance, as he seems to think, which exact allocation of resources is best. In a "true property-rights approach," private landfills could continue to operate and might very well choose to accept disposable diapers. To say that such an arrangement would violate property rights by introducing feces into "the environment" is an argument against digestion.

What distinguishes the garbage-disposal problem from such tricky environmental issues as air-pollution control is that the waste involved is easily containable. All negative externalities can be internalized simply by removing subsidies, allowing landfills to compensate their neighbors for any inconvenience or loss of property values, and then letting the markets clear. This is a problem that can be solved, but only if we stop equating "waste" with "pollution."

OUR COUNTY LEGISLATURE meetings are regularly attended by Greenpeace activists who incessantly hound the legislators with statistics and facts on the danger of too much garbage. We aren't proposing to dump garbage on their doorstep or asking them to live in the landfill or anywhere near it. We're only asking them to allow us the freedom to fill a human need—disposing of our garbage in an orderly and efficient manner. The government should heed Frédéric Bastiat's ad-

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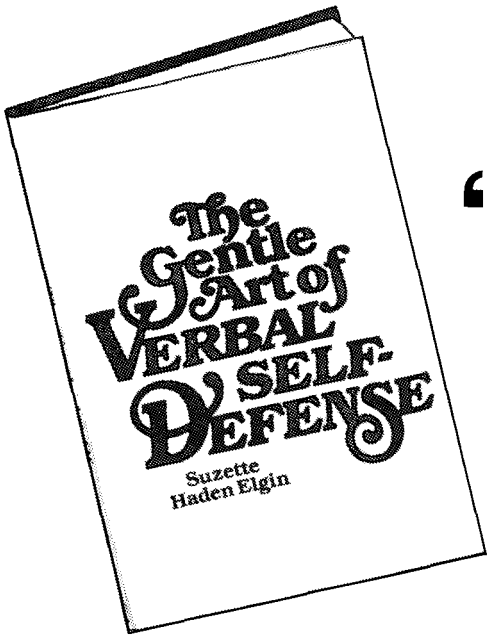

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About the Author

Psycholinguist Suzette Haden Elgin has presented her innovative self-defense principles in a variety of formats. She has given workshops and seminars all over the U.S., including verbal self-defense sessions for doctors, lawyers, and other professionals. Dr. Elgin has also created a self-defense tape and a training manual for people who teach her self-defense techniques.

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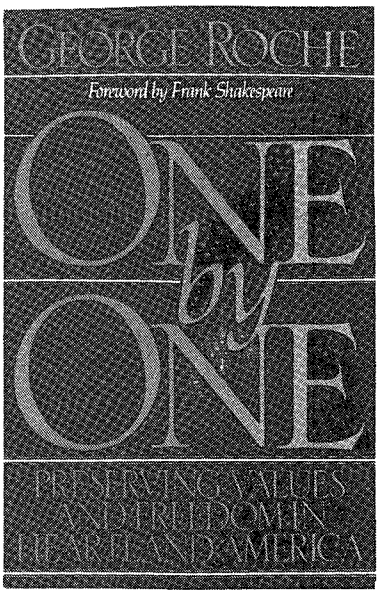

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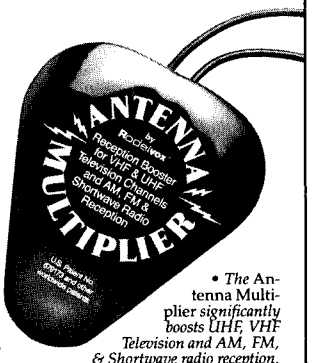
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Jacob Lapp
Cassadaga, NY

To the Limit

I found James Payne's article on term limitations enlightening and well researched, but I still disagree with the principle invoked ("Bad Influence," Aug./Sept.). Uninterrupted public service is a sign of voter apathy and cannot be effectively combated by simply shortening the number of years an official can serve. The only effective counterweight to self-promoting government is local participation by the people through such methods as privatization.

Term lengths are linked directly to the estrangement between the citizens and their government. A politician who is controlled by a strong electorate (one that does not use the government for self-aggrandizement) can no more pass expensive legislation in his 20th year of office than in his first. And the less money and power he has to throw around, the less appealing the prospect of a long career in office.

William S. Spicer
Baltimore, MD

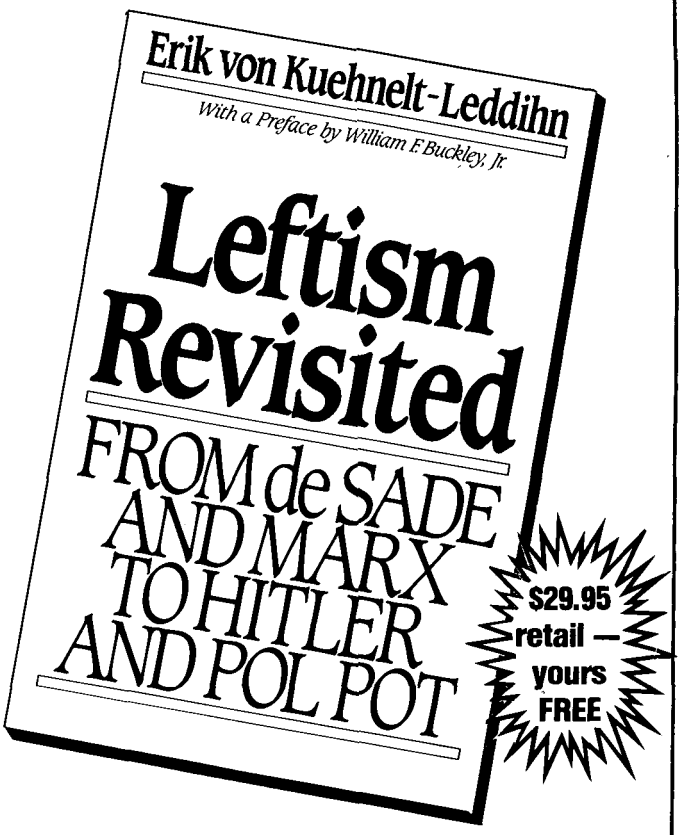
Swap Meet

Brink Lindsey overlooked an important argument for adopting a unilateral free-trade policy ("Reciprocity for Disaster," Aug./Sept.): Domestic industries that might be harmed by unilateral free trade are precisely the same ones that might be harmed by universal free trade. If eliminating trade restrictions is the goal, there is no reason *not* to do so unilaterally. To the "harmed" industries, quick unilateral action should even be preferable to a phased-in, international agreement since it would give them time to adjust while their foreign competitors are building new factories and distribution systems.

Lloyd Andrew
Arnold, MD

Landmark study of liberalism

Where it comes from. The many faces it wears. And why it is still the menace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Dioxin Doubts

"I don't want dioxin in my breast milk!" Hope exclaimed on an episode of "thirtysomething" a few seasons back, protesting the construction of a waste-incineration plant. Her objection expressed the popular terror of 2,3,7,8-tetrachlorodibenzo-p-dioxin, which has a reputation as "the most toxic synthetic chemical known to man."

Critics of government policy on dioxin have long argued that scientific evidence does not support that reputation, and recently they have begun to prevail. In August the Environmental Protection Agency announced that it is reevaluating the hazard posed by low concentrations of dioxin in the environment.

Two events helped prompt the review: a Long Island symposium on dioxin in October and a January report in *The New England Journal of Medicine* on the results of a major epidemiological study by Marilyn Fingerhut at the National Institute for Occupational Safety and Health.

"If dioxin is a human carcinogen...it is a relatively weak one and is a carcinogen only at extraordinary doses," Assistant Surgeon General Vernon N. Houk told *Chemical & Engineering News*. Houk, who urged the evacuation of Times Beach, Missouri, in 1982 because the town's soil was contaminated with dioxin, now says the move was unnecessary.

Studies of people exposed to concentrations of dioxin many times the level in Times Beach have repeatedly failed to find solid evidence of permanent, long-term health effects. Instead, the link between of dioxin and disease, especially cancer, has been based largely on studies of laboratory animals.

Extrapolations from such studies assume that if large doses over a short period cause cancer in lab animals, small doses over a long period will cause a proportional amount of cancer in humans. But officials admit that this assumption is usually wrong. Many scientists believe that a chemical must be present at a level of at least 10,000 molecules per cell before it can cause cancer. Furthermore, large, toxic doses cause direct damage that accelerates cell division, which in itself increases the chances of mutation.

Finally, physiological differences between people and lab animals may render comparisons meaningless. For example, recent research indicates that the biochemical process by which gasoline causes kidney tumors in rats does not occur in humans.

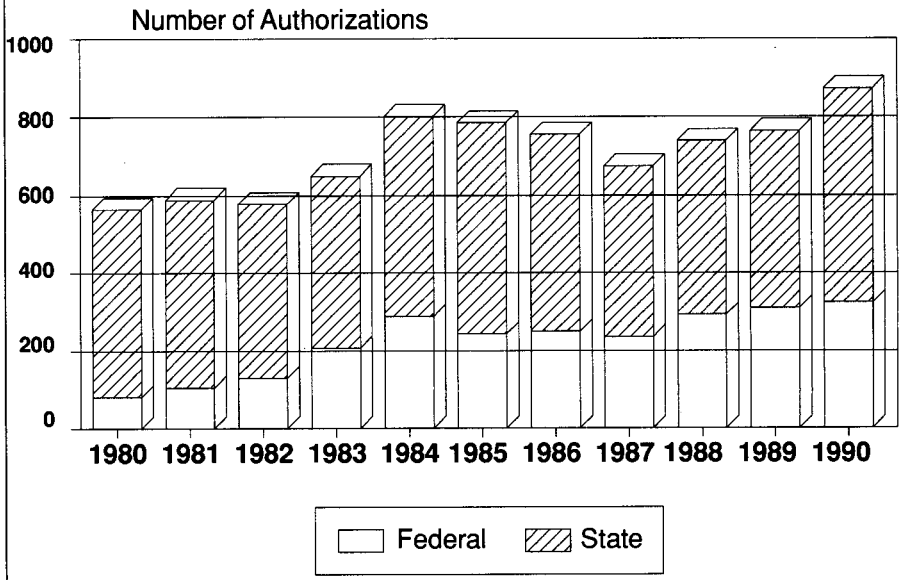
Edward G. Remmers, vice president of the American Council on Science and Health, says the questions raised by the reevaluation of dioxin could lead the EPA to reassess the dangers of other substances, including PCBs, cyclamates, Alar, saccharin, formaldehyde, lead, and radon.

—Jacob Sullum

You're Buggin' Me!

Federal wiretap authorizations have grown to a record level under Presidents Reagan and Bush. In 1980, the Carter administration requested only 81 bugs and wiretaps. But in his first year in office, Reagan upped the requests to 106, and that number has grown each year since. In 1990, the Justice Department received authorization from federal judges to install electronic surveillance 324 times, exceeding the all-time record of 310 set in 1989. State law enforcement has also increased its use of wiretaps, but at a slower rate. In 1980, state authorities used electronic surveillance 483 times. In 1990, states used 548 wiretaps. Drug cases account for almost all of the increases.

Federal and State Wiretap Authorizations 1980-1990



Source: Administrative Office of the U.S. Courts, Report on Applications for Orders Authorizing or Approving the Interception of Wire, Oral, or Electronic Communications.

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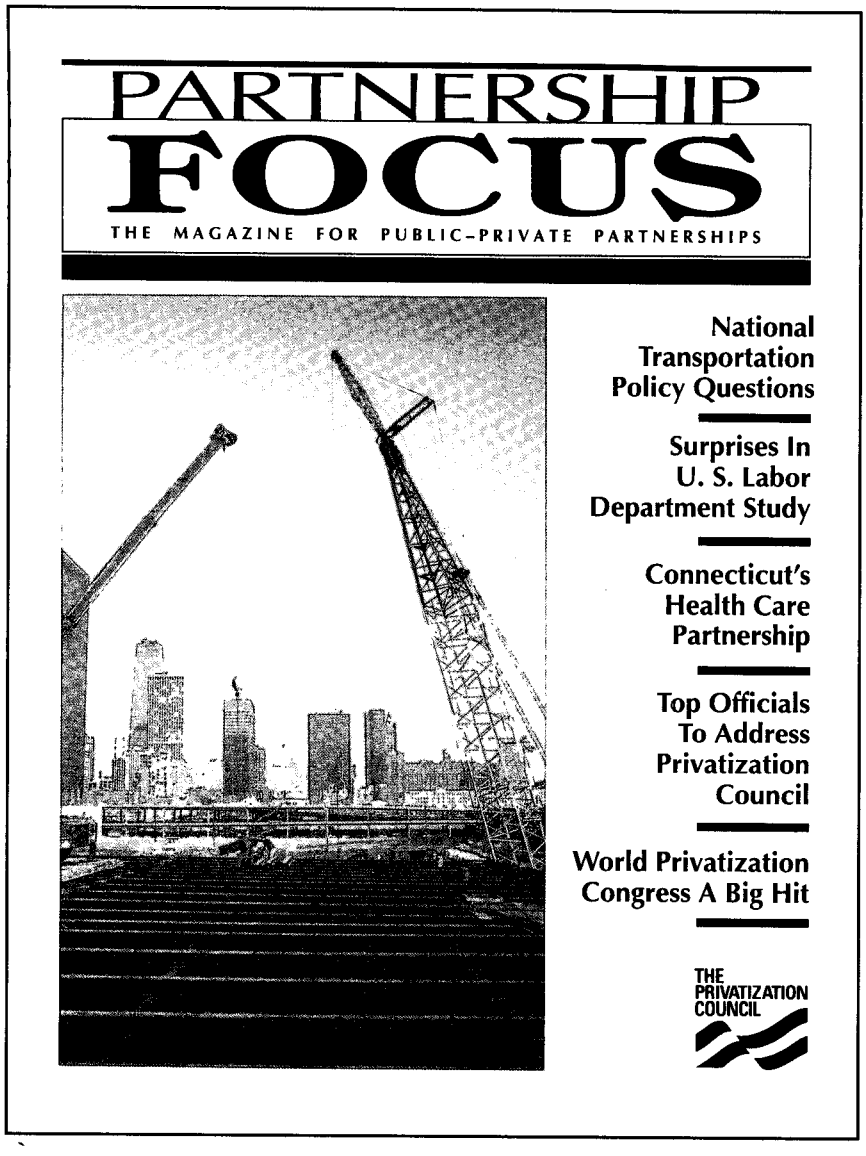
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BALANCE SHEET

Assets

Cease Fire. U.S. District Judge Juan Burciaga, New Mexico's senior federal judge, dismisses peyote importation charges against a member of the Native American Church. Burciaga calls the drug war "a wildfire that threatens to consume those fundamental rights of the individual...enshrined in our Constitution."

Jilted. California Democrats end their torrid fling with Gov. Pete Wilson. (See "Bigger or Better?", Nov.) Democratic volunteers circulate stickers and bookmarks with a picture of Wilson and the phrase, "Hi...I'm Pete Wilson and I tax snacks." These are the '90s, Governor. You don't crawl into bed with just anybody.

Salary Cap? Thirty-five states pass a constitutional amendment originally proposed by James Madison. The 1789 amendment states that Congress can't give itself a pay raise during its current term—an election has to take place first. If three more state legislatures ratify Madison's wish, Ralph Nader and Pat Buchanan will have to find something else to agree about.

Brush Off. A California judge throws out a ban on aerosol spray paints. Los Angeles Superior Court Judge Ronald Sohigian says a 1996 aerosol ban by the South Coast Air Quality Management District could cause more harm than good: Painters will buy cans of liquid paint and use solvents to clean brushes. The judge said the AQMD didn't consider "the adverse impact on water quality" when painters use solvents.

Liabilities

Protect and Serve? Amnesty International investigates human-rights violations—in Los Angeles. A three-member team from the organization will try to discover if the Rodney King beating was a fluke. Sadly, A.I. won't have to dig much for evidence: Local newspapers and broadcast outlets routinely cite excessive force by police officers and sheriff's deputies.

Retaliatory Strike. Rep. Dick Gephardt (D-Mo.) proposes a tough new antitrade bill some have dubbed "Super-Duper 301" to punish Japan, China, and other countries that sell lots of products to Americans. *The Washington Post*'s Hobart Rowen notes, "a trade surplus appears to be acceptable, in Gephardt's view, for the United States but for no one else."

Family Planning. It's baaack. The Senate may pass a veto-proof family-leave bill. The plan forces businesses with more than 50 employees to give 12 weeks of unpaid leave for parent, spouse, or child care. Small-business people scream. But say "family" these days, and politicians go goony.

Fee Simple. Musicians and record companies undertake a questionable new front in the legitimate war against "bootleg" copies of albums. *Los Angeles Times* trend spotter Michael Schrage reports the recording industry wants to punish you for making taped copies of albums you own. Bills before Congress mandate a 2-percent "royalty" on digital tape recorders and a 3-percent tax on blank tapes. Writes Schrage, "recording industry moguls are behaving like parasitical ingrates."

—Rick Henderson

Hack Attack, New Jersey

To barbers, auto mechanics, and other occupations that states and localities license, New Jersey may soon add another: computer programmers. A bill passed by the state Assembly would require "software designers" to prove their competence to state regulators before they can hack away.

Proposed as a "consumer protection" law by its sponsor, Associate Assembly Leader Barbara Kalik, the bill requires any person wishing to work as a software designer to either pass a state licensing exam, prove "sufficient" work experience to a state licensing board, or have a degree or college credits in computer programming.

Mary Juliana, a spokeswoman for Kalik, says the state Senate will probably amend the bill. One proposed change would drop the licensing requirement for programmers who work for firms such as AT&T. Freelance programmers would still have to pass state scrutiny.

Existing computer firms would also be "grandfathered" under this amendment. So some of these consultants actively support licensing new entrants into their field. In a letter to *The New York Times*, Leonard Turi, president of Farmingdale's Consulting Services Inc., writes: "Today, anyone could claim they are a 'consultant' without any supporting criteria. This devalues the integrity of consultants who have spent years in the industry."

But other software developers oppose licensing. Sophia Veney, a spokeswoman for the trade group Information Technology Association of America, says the definition of *software developer* could include people who enter names on a company mailing list. Such licensing requirements could have kept software powerhouse Microsoft, founded by self-taught programming whiz Bill Gates, from ever getting off the ground. While recognizing that the law may encourage businesses to leave New Jersey, Juliana says "we think it's a good bill."

—Rick Henderson

The Bog Lifts

After months of internal debate, the Bush administration has proposed new federal wetlands-protection policies. (See "The Swamp Thing," Apr.) If the proposals survive, property owners will breathe a bit easier. Among the proposals:

- A distinction between wetlands that perform environmental functions, which will be protected, and random puddles, which won't. Also, irrigation ditches, wet spots in corn fields, and other normal consequences of farming and ranching will no longer be considered "wetlands."
- A system to classify wetlands and set priorities, so that land with the greatest ecological value would merit the most aggressive protection.
- A simpler process for obtaining permits to alter wetlands. Currently, the Army Corps, the Soil Conservation Service, the EPA, and the Fish and Wildlife Service can deny land owners permission to alter wetlands on private property. The new policies make the Army Corps the final arbiter in any wetlands dispute.
- A more-restrictive definition of wetlands. The current definition allows land that is flooded for as little as seven consecutive days a year—the normal run-off period during a spring thaw—to be deemed wetlands; under the new policy, standing water has to be at the surface for 15 consecutive days and the soil must be saturated for 21 straight days.

John Hosemann, senior economist at the American Farm Bureau Federation, cautions that the proposals don't include schedules to compensate land owners when their property is declared wetlands and don't define "saturation" clearly. The Farm Bureau prefers legislation to protect wetlands instead of bureaucratic edicts. Still, Hosemann says the group "appreciates [the administration's] movement towards common sense" in wetlands policy.

—Rick Henderson

Raid Reparations

In March 1990, Secret Service agents raided the offices of Steve Jackson Games in Austin, Texas, as part of Operation Sun Devil, a nationwide investigation of computer hacker activity. (See "Closing the Net," Jan.) They trashed the place, seizing computers, equipment, and records. Yet neither Jackson nor any of his employees was ever charged with a crime, and the Secret Service acknowledges that the company was not a target of the investigation.

Since then, the Secret Service has returned most of the equipment, but as of late August it had not offered restitution for damage caused during the raid. Jackson has filed suit against the service, two agents, and a U.S. attorney, charging that the search and seizures violated the Privacy Protection Act of 1980, the Electronic Communications Privacy Act, and the First and Fourth amendments.

The "defendants' wrongful and unlawful conduct," the suit charges, "amounted to an assault by the government on the plaintiffs, depriving them of their property, their privacy, [and] their First Amendment rights and inflicting humiliation...upon them."

Electronic Frontier Foundation general counsel Michael Godwin, who helped prepare the suit, says that if Jackson wins, the decision may prove that an electronic bulletin board "has the same First Amendment protections as any other publisher." Godwin also hopes the courts will rule that the government has to show probable cause before moving against a bulletin board service or computer user under the Computer Fraud and Abuse Act.

Godwin says a final decision in the case may be a year or two away. No court date has been set, and Godwin predicts that the legal maneuvering "will probably work its way through '92 or '93."

—Martin Morse Wooster

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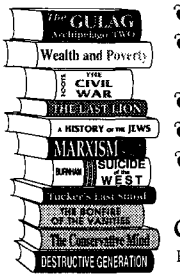

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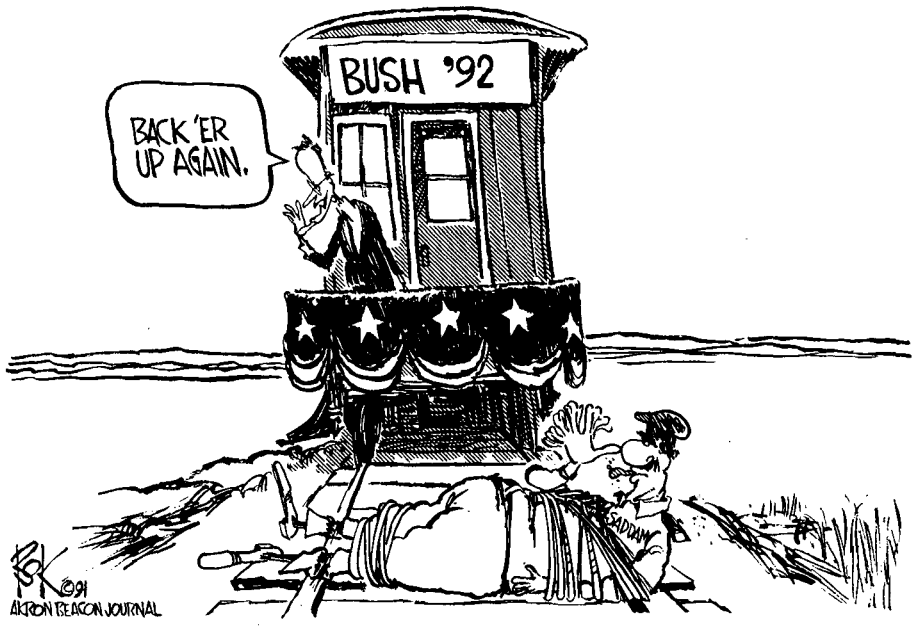
BRICKBATS

Billy Jack Goes to Washington, Part II. Tom Laughlin is exploring a possible campaign for president. The actor—best known for his early '70s portrayals of Billy Jack, a Vietnam vet who used hapkido to teach counter-culture values to rednecks—has been giving political speeches throughout Iowa and talking to campaign consultants. Even money says he finishes better than Paul Tsongas.



Swedish businesswoman Helen Wellon has a bone to pick with a government council against sexually discriminating advertising. The council has condemned an ad showing Wellon sitting beside one of the portable computers she sells. Citing her "deep décolletage" and "inviting smile," the council said the photo depicted Wellon as a sex object and did not contribute information about the product. Wellon says that she was merely dressed the way she dresses at work: "This is my style, short skirts and a deep décolletage." The stunning blonde complains that the council is prejudiced against her because she is an attractive woman who is proud of her looks. "It is high time that women are accepted even if they happen to have a big bust and do not dress like a man."

The Progressive reports that Texas state Rep. Larry Evans died recently. Evans's voting light blinked for roll call votes for several hours after his death. He continued to vote until cops announced they had discovered his corpse.

A New York state commission on multiculturalism in the schools wants to replace phrases that it thinks are too Eurocentric. For example, "minority" is out. From now on, teachers must use the phrase "member of the world's majority." So all minorities are women?

In Marin County, California, environmentalists are trying to ban people wearing perfume from public meetings, libraries, hospitals, and the offices of doctors, dentists, and therapists. Not to be outdone, the state's Air Resources Board is considering a proposal that would make it illegal to sell most perfumes. In California, it is better to look good than to feel good, but smelling good is another matter entirely.

Acting on an anonymous tip, drug agents from the Campbell County, Virginia, sheriff's department seized eight seedlings from Doug Mitchell's front porch. Lab tests determined that the plants were Japanese dwarf maples. The lab tests also destroyed the plants.

In Eugene, Oregon, Madison Middle School pulled the plug on Channel One, the in-school news program for youngsters. School officials didn't want students to see a story on the recent vandalism of Michelangelo's statue of David. The reason: the "full, front view" of the nude sculpture.

A new turn in the outing craze. The Bald Urban Liberation Brigade of New York City is posting fliers of celebrities who secretly wear toupees.

A General Accounting Office study has found that members of the House of Representatives bounced 4,325 personal checks during the first six months of 1990. Twenty-four legislators bounced at least one $1,000-or-more check each month. Gee, if they gave themselves another pay increase, they wouldn't have these financial problems.

Lloyd Manson planned to build a new home on a lot he purchased in Santa Cruz, California. But arborists told him that the towering eucalyptus trees on the property were likely to topple onto his house during a wind storm. So Manson decided to cut down the trees. However, people who live near the lot got an injunction forbidding Manson from cutting the trees. Said Gillian Greensite, a leader of the fight to keep the trees, "We live in a community, and trees are part of that community." Yeah, but do they ever invite you to dinner?

—Charles Oliver

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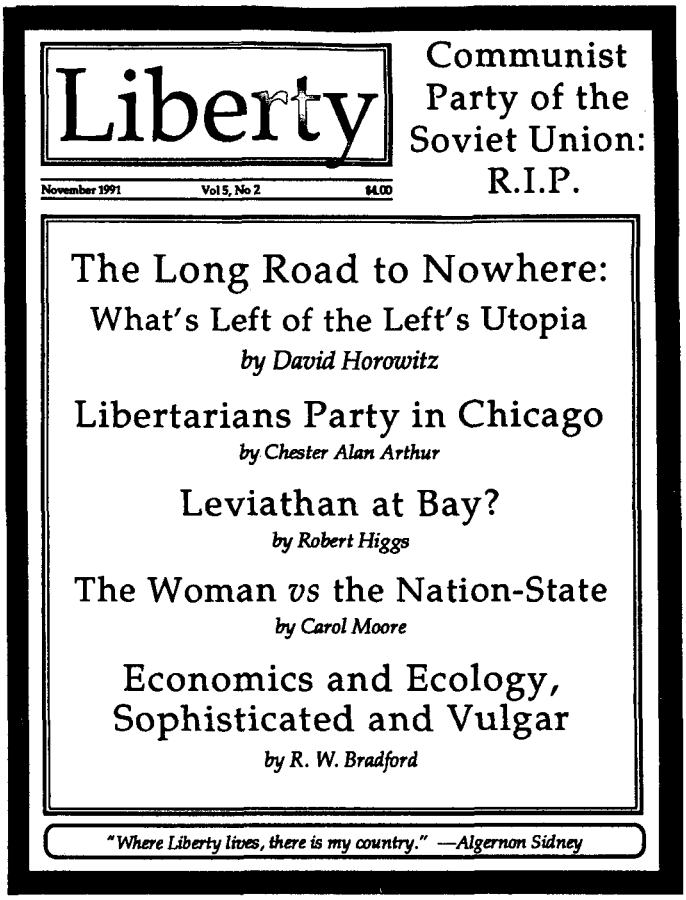
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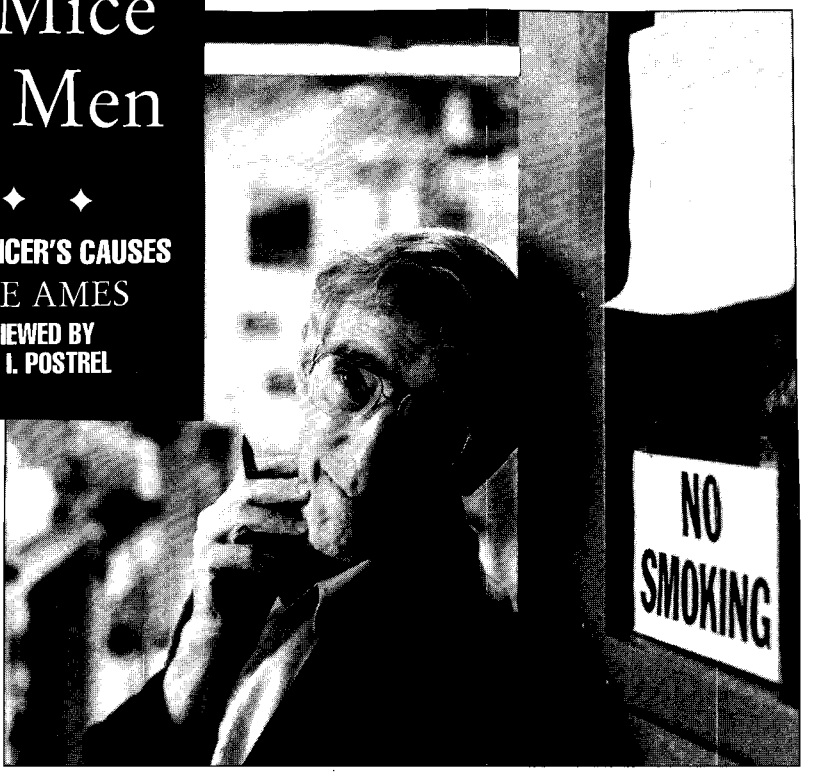
Of Mice and Men

✦ ✦ ✦

FINDING CANCER'S CAUSES

BRUCE AMES
INTERVIEWED BY
VIRGINIA I. POSTREL



In the 1970s, Bruce Ames was a hero to environmentalists—the inventor of the Ames Test, which allows scientists to test chemicals to see whether they cause mutations in bacteria and perhaps cancer in humans. His research and testimony led to bans on such synthetic chemicals as Tris, the flame-retardant used in children's pajamas. A world-renowned cancer researcher with a calm, reasoned manner, Ames was an ideal witness in the case against man-made chemicals. As science writer John Tierney aptly described him in Hippocrates, "He has a quiet, kindly tone of authority as he patiently explains why things are the way they are....He sounds so sensible, which is one reason he made such a good witness for the environmentalists in the 1970s."

But it's a scientist's imperative to change his mind when the data change—and recent data have made Ames deeply suspicious of high-dosage chemical testing and especially of the notion that man-made chemicals are uniquely dangerous. We are, he has discovered, surrounded by mutagens—not only synthetic chemicals but also natural ones—and blindly banning suspicious modern substances can do more harm than good.

Today, Ames, a professor of biochemistry and molecular biology at the University of California at Berkeley, stands on the other side of the chemical-ban debate. In 1990, he spoke out against California's Proposition 128, which would have banned many pesticides, and he has been highly critical of the ban on Alar. The best way to prevent cancer, Ames now believes, is to "eat your veggies." Any government action that makes fruits and vegetables more expensive ultimately causes cancer. In recent years, Ames has added a dollop of the economist's sense of trade-offs to the cancer researcher's zeal for prevention.

Ames discussed cancer research and environmental politics with Editor Virginia Postrel at his office in Berkeley.

Reason: You've become well known for saying that we shouldn't worry so much about man-made chemicals causing cancer, that natural carcinogens are far more common and we shouldn't worry about them either. Why is that?

Ames: It isn't that we shouldn't worry about man-made chemicals. In certain occupations, people can be exposed to very high levels. But pollution is pretty much irrelevant to cancer—the kind of pollution that we're getting with water pollution, or with pesticide residues, is in *such* tiny amounts.

People got off on the wrong track about man-made chemicals. They said, Look, we know workers can get cancer from high doses of beta naphthalene or vinyl chloride. We shouldn't have the workers be guinea pigs—we should test these things in rats. And that was reasonable. So they started testing the industrial chemicals in rats.

Reason: And they picked these chemicals because they were known to be associated in high doses with cancer?

Ames: Originally the driving force was high-dose occupational exposure, but soon it came to be testing every synthetic chemical and half of them came out positive in rat tests. I think we're drawing the wrong conclusions from high-dose rat tests. They are testing enormously high doses—the maximum tolerated dose in the rats or the mice, which means you find the level that causes overt toxic effects and back off just a little bit and feed the animal that amount every day for a lifetime. That sends toxicologists up the wall because that's a very high dose, and they are afraid that will do something that isn't relevant to low doses.

But the control, which people should have thought of but they didn't, is what about all the chemicals in the natural world? People got in their head, well, if it's man-made somehow it's potentially dangerous, but if it's natural, it isn't. That doesn't really fit with anything we know about toxicology. When we understand how animals are resistant to chemicals, the mechanisms are all independent of whether it's natural or synthetic. And in fact, when you look at natural chemicals, half of *those* tested came out positive.

Of course, almost all the world is natural chemicals, so it really makes you rethink everything. A cup of coffee is filled with chemicals. They've identified a thousand chemicals in a cup of coffee. But we only found 22 that have been tested in animal cancer tests out of this thousand. And of those, 17 are carcinogens. There are 10 milligrams of known carcinogens in a cup of coffee and that's more carcinogens than you're likely to get from pesticide residues for a year!

Reason: Why not conclude that you shouldn't drink coffee?

Ames: But half of all the things tested are coming out positive. The point isn't to worry so much about cups of coffee, but to rethink what we're doing with animal cancer testing.

TOM ZIMBEROFF

We're eating natural pesticides, which are natural chemicals that plants use to try to kill off insects that try to eat them. And we eat roughly 1,500 milligrams of them per day. We eat 0.09 milligrams of synthetic pesticide residues. So we're talking about incredibly tiny amounts of synthetic pesticides, and yet the same percentage of natural chemicals come out positive.

So then the question is, What's wrong with high-dose animal cancer tests? I've been arguing in the literature that cell division is a risk factor for cancer, as is mutation. A mutagen damages your DNA, and everybody agrees that that's a risk factor for cancer, and cancer can occur with accumulated mutations. But when the cell divides, DNA damage is converted to mutations. So what we've been arguing is that raising *either* increases your risk of cancer—either the rate of cell division or the rate of mutagenesis. So when you test these enormous doses of a chemical, cell division can be caused in various ways. It's like a chronic wounding experiment. When you wound tissue, you get a lot of cell proliferation, because you get signals for the cells to come in and heal the wound and start dividing. So I think that a sizable percentage of the chemicals are only going to be a risk factor in high doses—like saccharin.

Reason: Because they have this wounding effect?

Ames: Yes, at these enormous doses. Saccharin is a carcinogen at high doses, and everything we know about the theory says there's no risk at all at low doses. I think that some sizable percentage of all the chemicals we're calling carcinogens are going to be like that.

Now if something's a *mutagen*, it can both damage the DNA and kill cells. If you get to high enough doses where it's killing cells as well as damaging the DNA, then you're getting an extra multiplier. For a mutagen there might be a small risk at any level. But in most cases you also get this big multiplier that's only a high-dose effect. So all this says is that the risk numbers people are throwing around are going to just be wrong. And the further you get from the dose you gave the rat, the less you want to worry about it.

Reason: People do want to know what causes cancer.

Ames: That's what I'm very much interested in. Cancer is primarily a degenerative disease of old age. It goes up very sharply with age. [Shows diagram to right.] Rats live about two to three years and by the end of their lifetime, 30 percent of them have cancer. At 1 year old, very few have cancer. Mice have a slightly shorter lifespan, and the curve is shifted to the left. And people show a similar relation, except we live to 80 years. This suggests that cancer is a degenerative disease of old age, in the same way as heart disease and cataracts and all the other things you'll find out about soon enough as you get older. It doesn't mean that external factors can't influence it—we know cholesterol influences heart disease, and smoking is 10 years off your life, so if everybody stopped smoking the curve would move out. But underlying it all, the reason there is more cancer is more people are going up that curve. More people are living longer and longer every year, and as we're living longer we see an increase in cancer.

Reason: The incidence of childhood leukemia would seem to go against the idea that cancer is an aging disease.

Ames: There is some risk of cancer at any age. But what people have recently turned up is that male smokers are more likely to have kids with childhood leukemia. So smoking has genetic effects. With cancer you need a number of hits—a number of different mutations—and if you have one genetically, from a father who smokes, then the other one can occur soon afterwards and show up as childhood cancer.

Reason: Male smokers but not female smokers?

Ames: Studies show that smoking by either parent increases the child's risk of cancer.

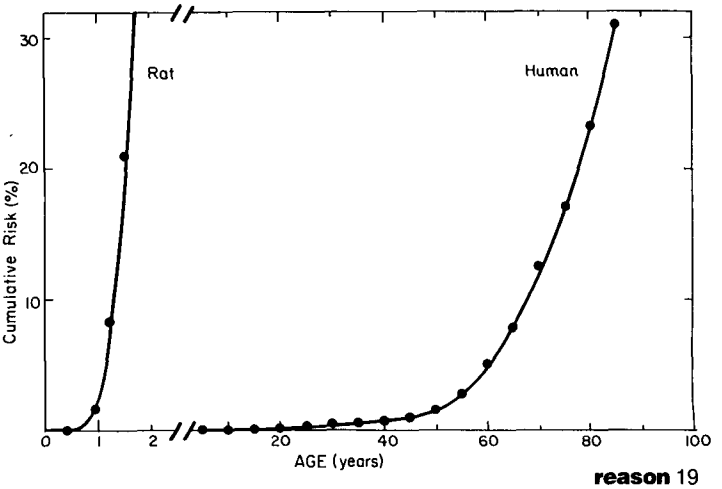
Reason: Lately breast cancer has started to get a lot of attention in the media.

Ames: OK, now with breast cancer, the two best people right now are down in Los Angeles, and they think they are solving it—Brian Henderson and Malcolm Pike at USC, two of the world's leading epidemiologists. They've been studying breast cancer for a long time. It seems to be mainly hormones. It was known for a long time that women who have lots of children have very low rates of breast cancer, and nuns have very high rates of breast cancer. It has to do again with cell division. Every time a woman has her cycle, she has cell division in the breast, so that seems to be a critical risk factor. Childbirth interrupts that.

We know how to prevent breast cancer: You live like a Chinese peasant who lived 100 years ago. You work in the fields, on a meager diet, so you have your first period at age 17 and then you start having a child every year. It's a good recipe for not getting breast cancer but not very practical. The question is, Can one intervene with hormones? What Henderson and Pike say is that it's known that if you take out a woman's ovaries, it stops ovulation, but that is another solution that is not very practical. But certain birth control pills do something similar. So Henderson and Pike are coming up with a complex of hormones that they think would make a good oral contraceptive and also cut the risk of breast cancer dramatically. They're trying to test it out and get it through the FDA. If they're right, it's going to be terrific. If they're not right, somebody else will figure it out in five years.

I think people are going to figure out the causes of cancer and heart disease and aging. It's coming very fast, and it's due to science and technology and a healthy economy. Basic

Cumulative Net Risk of Death from Cancer for Rat and Human



science is the child of a healthy economy. The reason you have all these scientists in the United States is because we can afford to spend money on basic research.

Reason: How accepted are your views among cancer researchers?

Ames: Well, we've had a controversy going back and forth in *Science* recently, and I got fan letters from all sorts of people that I really respect in the world, saying, Keep on, you're on the right track, we agree with you. And there are people who disagree. But I do think I'm winning the scientific wars.

Let's go back to what's really causing cancer. If you ask the epidemiologists, after years and years of studies, they say eating more fruits and vegetables lowers the cancer rate.

Reason: Regardless of what kind of cancer?

Ames: Many kinds of cancer. And eating more meat and saturated fats seems to raise the rate of some cancers. There's evidence for this, and I'm more and more convinced. But then the question is, What are the dietary factors? And more and more, it looks like folic acid is very important, which is one of the vitamins you get from fruits and vegetables, as well as antioxidants.

We're doing experiments with mice. You make them slightly folic-acid deficient, and it breaks their chromosomes. There's a little evidence that the same thing might be true in people, and there's some epidemiological evidence that women who don't eat their fruits and veggies have more kids with birth defects.

Reason: Why does folic acid appear to be the crucial thing?

Ames: Because folic acid is involved in making the purines and pyrimidines that go into DNA. And if you're deficient, what happens is deoxyuridine gets into the DNA. The body's balanced between damage and defense. If you leave out one of the vitamins or micronutrients, then you're in trouble. Maybe more micronutrients will turn out to be very important, but right now it seems the antioxidants such as vitamin C are important and folic acid's important.

Reason: What do you mean by antioxidants?

Ames: Among the vitamins you need are a set of antioxidants—vitamin C and vitamin E and beta carotene. We've shown that there is a *tremendous* amount of oxidative damage to DNA just from living—from normal metabolism.

Just living is like getting irradiated. Radiation is an oxidizing agent. You're adding four electrons to oxygen to make water, you add them one at a time, you make superoxide and hydrogen peroxide and hydroxyl radicals, which are the substances you get from radiation. If the DNA gets damaged, then repair enzymes, which are always cruising along the DNA looking for trouble, take out the damaged product—this oxidized base—and they repair it. Well, the oxidized base goes into the urine, and we've learned how to fish all these things out of urine and ask how much damage a human gets per day or how much damage a rat gets per day. The higher your metabolic rate, the more damage, so a mouse is battering up its DNA at a higher rate than the rat, the rat higher than the monkey, the monkey higher than a human—which fits with lifespan and the cancer rate. So we're all excited about oxidative damage and aging and all these degenerative diseases associated with aging.

The epidemiologists are finding that antioxidants are some of the ingredients in fruits and vegetables. If people don't eat their veggies then they are in trouble. My main interest now is to find what's the optimum level of all these things. Maybe the optimum level is much more than the RDA. We don't know that, but right now people aren't even getting the RDA, the Recommended Daily Allowance.

Reason: Can people take vitamin pills?

Ames: Well, the nutrition people don't like that. They say you should be told to eat balanced diets. Two fruits and three vegetables per day at least. On the other hand, only 10 percent of the population are eating two fruits and three vegetables a day. So I'm coming to the conclusion that people should be taking one-a-day pills. Certainly pregnant women and poorly nourished people and anybody of childbearing age and older people.

Reason: Activists are very suspicious of you.

Ames: All I can say is I've done good science. In part, I think my talent in this area is I've always been a bit of a generalist and being a generalist is hard, because there's so much specialized knowledge. To be a successful generalist one has to know the best people in each field so that you can call them up on the phone and ask them questions and get feedback on ideas.

I've gotten very suspicious of a lot of the activists because I just feel that they are not good problem solvers. If you push in the wrong direction, then you're counterproductive. If we are spending $125 billion a year on EPA regulation, and it's not effective, that kills people, because it diverts resources from important things and it takes money that could be used for starting new companies and generating wealth and generating money for science.

I'm not saying you shouldn't have rules. You don't want every chemical company dumping its garbage out the back door. But what we're telling companies is, Well, air is free and water is free, but be good guys, don't pollute. That isn't how capitalism works. You want to have an incentive in there, so what we should be doing is charging people to pollute. Any time anybody wants to pollute—whether you drive your car or put a log in your fireplace—you should have to pay for pollution cost. Then there are incentives to figure out how to make cars that put out less pollution.

Reason: Within the academic research community, how do people look at people who have gotten involved in public-policy debates?

Ames: Most scientists tend to steer away from that. You get promoted and you get recognized by your peers, you get to go to international conferences and all that, by doing good science. And if you make a mistake, then everybody jumps on you. There's no incentive for scientists to be getting involved in policy, though people do it when they feel a responsibility.

Reason: Are there incentives not to do it?

Ames: Yes, I would say probably so. If I spent 5 percent of my time talking to you or talking to *Omni* or other people, then it's time I'm not spending working on what causes aging and

maybe I'm better off being in a lab trying to do that.

Reason: Do you see yourself at this point as something of a popularizer as well as a researcher?

Ames: Yes, a little bit. I feel it's partly my duty. I'd really like to prevent cancer. The best way to go about it is prevention rather than trying to find a cure for cancer, because that's so elusive, though we need to work on that, too...

Reason: You mean on treating it?

Ames: Yes. I'm much more interested in preventing cancer. Then we have to get out to the public what's important. If you tell them about trivia all the time, they get completely confused, and it's counterproductive. I just think all this business of organic food is nonsense basically. We should be eating more fruits and vegetables, so the main way to do that is to make them cheaper. Anything that makes fruits and vegetables more expensive may increase cancer.

Reason: Do you think there might be legitimate concern for worker exposure?

Ames: Worker exposure is very different. I think you want strict rules, because there people can get very high doses. We were having some guy paint our house. He was up on a ladder with a spray can, spraying the house. I said, "Hey, you have to wear a mask. You just can't be in a cloud of that. Don't you know you shouldn't be breathing all that stuff?"

"Oh, I can't wear a mask. I need to stop every once in a while and smoke." So he stopped and took out a cigarette and smoked. So partly it's hard to convince people. It's a macho thing or whatever. But we do need rules, and people whose occupations expose them to high doses of chemicals need to follow the rules.

Reason: Aside from the specific scientific issues where your research has a direct bearing on policy, how would you describe your own political views?

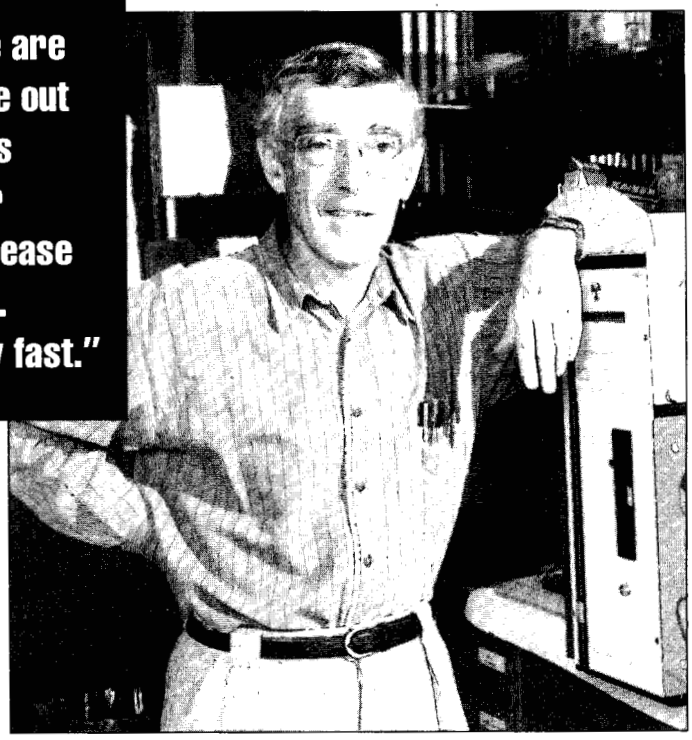
Ames: Well, I guess I feel I'm neither a leftist nor a conservative. It's probably more libertarian. Again, I'm not a fanatic. I feel we should give people the maximum choice possible and let them pay for their mistakes. I think if the government starts trying to insulate everybody from their mistakes, from the consequences of their acts, we're in trouble, because that's a constant feedback in people's lives. If somebody doesn't save his money, should you really then have to provide for him, when the person who saves is skimping now and thinking long term? Of course, with kids, you educate them. But we have to treat adults as adults.

Reason: Do you favor any kinds of regulations to restrict smoking?

Ames: Smoking is 10 years off your life. If somebody voluntarily takes 10 years off his life, fine. But the rest of us shouldn't have to pay for it. Now second-hand smoke I don't think is a big deal in terms of causing cancer. But a lot of people just don't like second-hand smoke around them. I don't either.

✦ ✦ ✦

"I think people are going to figure out the causes of cancer and heart disease and aging. It's coming very fast."



It seems to me it's reasonable that, if someone is polluting the air, then he should do it in his own little cubbyhole or some part of the restaurant that doesn't get to the rest of us. But on the other hand, I walk to work, but I don't think everybody who drives to work should be prohibited from using his car because he's polluting the air. Life is full of trade-offs.

Reason: Do you consider yourself a very political person?

Ames: Well, I like to read economics and think about these things. I'm trying to be a wise man in my old age, which is hard because everything is so specialized, so again maybe it's part of being a generalist.

Reason: Are there particular books or thinkers...

Ames: I was influenced by reading [economist F.A.] Hayek and people like that and thinking the way economists think about trade-offs and optimizing. There is an optimum level of pollution, but most environmentalists throw up their hands. They want no pollution.

Having dealt with EPA and FDA and these government bureaucracies, I'm fairly disillusioned. When we developed our test system for detecting mutagens, I thought industry would fight it and the government would have everybody using it. It was just the reverse, because industry has an interest in not making mutagens and carcinogens. It's bad for the business. And government bureaucracies are hard to turn around on anything.

Reason: You accept no money from industry.

Ames: No. If I give a talk at Du Pont, I have them send the honorarium to charity.

Reason: So the research money comes from the government?

Ames: My research money all comes from the government. It's fiercely competitive.

Reason: Over time, the government, especially the federal

government, has acquired a near monopoly on the funding of scientific research...

Ames: As a sort of crypto-libertarian, I worry about that. And in a way, scientists have a self-interest in jacking up the government funding of science. But I think the people get their money's worth from it—the U.S. has the strongest science in the world, and all kinds of industries come out of research, so it's good for the economy, it's good for human knowledge, it's good for our health. I once had dinner with Milton Friedman, and he started off the conversation saying that he thought they should abolish the EPA, the FDA, and government funding of science. The first two I could have at least considered, but the government funding of science didn't fly. Probably what Friedman would say is if you didn't have government funding of science, industries would think much longer term and they'd fund basic research, because it would be in their interest to do it in a technological society. But there are some things that are very long-term, and in a way having government funding is good. As long as it's competitive.

And so far it's been fiercely competitive. You have committees of your peers judging all these things. They don't always make the decisions that I think that they should make, but at least it's a reasonable system where merit wins out. Now you could politicize that and start getting one representative from each state or whatever. But then it becomes less a meritocracy, and if there's too much of that the system's going to go down.

Reason: You seem extremely optimistic both about scientific research and about understanding cancer.

Ames: I'm incredibly optimistic because science is growing so fast. There are millions of scientists in the world, and every new rich country needs them and trains them. And everybody's communicating. Life expectancy gets longer every year, and it's going to get even longer, and it's due to modern science and technology. All these romantics are trying to paint science and technology as the thing that's dooming the world—I just don't believe that either. Everything I know says the opposite.

Reason: Do you think that science is threatened by those kinds of ideas?

Ames: Oh yes. In some fundamental way, a lot of environmental extremists are anti-science, anti-technology. They want to go back to some imagined, idyllic world that never existed.

Reason: Does the general public's lack of understanding of science bother you?

Ames: Sure, but nowadays people are sitting in front of the TV, and they get what they get on the TV, which isn't very much science.

Reason: How much is it just a function of specialization that people don't know science?

Ames: You can't know everything, but you can read about some of it, and science is so much fun. You'd think people in the modern world would want to know how the cell works, what DNA is doing and all of these things. It just seems so exciting.

Reason: You've written a piece for the Social Policy Research Center about science as a spontaneous order. What do you mean by that?

Ames: It's not being planned from on top. Everybody has his enthusiasm. If I decide I want to go off on this tangent and that tangent, I can do it. Scientists are always thinking of a way to get new knowledge cheaper or faster or whatever, and so it tends to come up from the bottom. It's not some bigwig saying, I thought it all out—you do this, you do that.

Reason: How does government being a big source of funding affect that?

Ames: Well, the government does say, We're giving money for heart disease, we're giving money for cancer. So in that sense it's from the top down. But they've always been relatively good about saying, Well, since cancer is so complicated, anything that helps the understanding of general knowledge of how cells work we'll call cancer research. So it wasn't directed, which is a good thing, because all the advances come from people following their individual enthusiasms.

Reason: What would be an advance that no one would have planned?

Ames: Well, I was working in bacteria and got interested in mutations and mutagens and thought I'd set up this test system in bacteria. And then I thought that carcinogens might be working as mutagens, so that turned out to be an advance in cancer research. But I couldn't get funded from National Cancer Institute because people in the National Cancer Institute in those days weren't interested in mutagens or they weren't thinking along that line.

Reason: So you got funding from...?

Ames: Eventually from the Atomic Energy Commission.

Reason: So the fact that it's chopped up into all these different places is a positive?

Ames: The more sources of funding, the more different people with different views, the better it is. Because it's not directed from on top.

Reason: What about the criticism that a lot of scientific research is just waste?

Ames: A lot of scientific research is unimaginative. But that's part of the nature of it. It's hard to know beforehand. If you could weed out all the research that would never lead anywhere, then we would know everything before we started. It's a discovery process and you don't know where everything is going to go. People who are doing the research always think, Ah, that's an important experiment.

Reason: Do you ever worry that your critics are right and you're wrong and you account for cancer deaths by making these arguments?

Ames: All the time. I mean a good scientist is always thinking, where could I have gone wrong? So I'm always kicking all my assumptions and one of the reasons why I'm successful is I'm always challenging assumptions. If there's a paradigm around and somehow too many uncomfortable facts start coming up, then you say, Ah, how do I knock it down? What's better? So one's always doing that. But I'm as sure of these ideas as anything I've ever done in science.

Reason: Thank you.

Jacques Chirac, Steffi Graf, and Federico Fellini would like to have a word with you.

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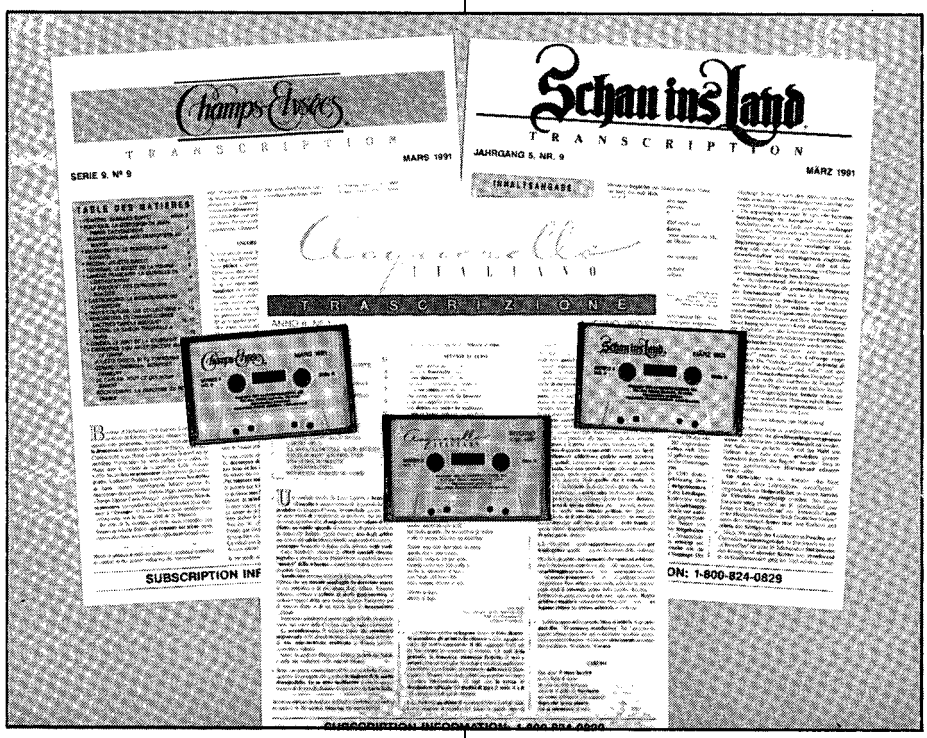

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Annual Book Section

FENCING IN THE FOURTH ESTATE

By Michael McMenamin

Who is Lucas Powe, and why does he think I make too much money?

And why does Mark Graber want to restrict my right to disagree with Powe?

Powe, professor at the University of Texas School of Law, is the author of *The Fourth Estate and the Constitution.* One of his conclusions is that the

The Fourth Estate and the Constitution: Freedom of the Press in America, by Lucas Powe, Berkeley: University of California Press, 369 pages, $29.95
Transforming Free Speech: The Ambiguous Legacy of Civil Libertarianism, by Mark Graber, Berkeley: University of California Press, 347 pages, $39.95

only ones who benefit from the current libel-law system, largely constructed upon the U.S. Supreme Court's 1964 decision in *New York Times v. Sullivan*, are media-defense lawyers: "While the problems that the libel rules pose for the press are complex, they ultimately can be subsumed under a single heading: money. Libel litigation, as we have already seen, allows attorneys for the media to make out like bandits."

Bandits? I confess to being a media-defense lawyer, and I do spend a considerable portion of my professional life representing various media clients in libel litigation in the television, cable, newspaper, and magazine industries. But a bandit? Our clients needed defending, and the First Amendment is the libel-defense lawyer's weapon of choice, even more than truth, because it is easier, and most times cheaper, to claim First Amendment protection than to litigate the "truth."

As a consequence, the scope and extent of First Amendment rights today are greater than at any time in our nation's history—even if the extent isn't as great as the plain language of the amendment would permit. Accordingly, we media-defense lawyers prefer to think of ourselves as those who have an opportunity, as Powe more gently observes elsewhere in his book, "to do well by doing good."

If Powe thinks media lawyers make too much money, his colleague Mark Graber, an assistant professor of government at the University of Texas, wants to make sure we don't spend more of it exercising our First Amendment rights than those less fortunate. He notes in his new book, *Transforming Free Speech*: "Individuals have the constitutional right to convert their material resources into political expression as long as the average member of the community can afford to invest similarly in politics....No one has a constitutional right to use economic privilege to magnify otherwise relatively weak political skill....Affluent Americans have no First Amendment right that permits them to achieve political success through constant repetition of relatively unwanted ideas."

Issues of compensation aside, friends of the First Amendment will find a lot to like in Powe while only the politically correct will find comfort in Graber. Lucas Powe's last book, *American Broadcasting and the First Amendment*, won several awards and is a seminal work in the field. It effectively destroyed the oft-stated basis for government regulation of broadcasting and demonstrated that "regulation in the public interest" is merely a convenient cover story for government censorship, political abuse, favoritism, and corruption. His solution: complete First Amendment freedom akin to that enjoyed by the press for all broadcast media, including radio, television, cable, and any new technologies that may emerge.

Powe's new book is even better, despite his lawyer-bashing. The first part of the book is one of the best short overviews of the history of the First Amendment I have read. The second part is an in-depth coverage of four major First Amendment issues facing the press today—libel, prior restraints, access to sources and information, and antitrust.

Powe's chapter on libel is on the mark when it properly identifies the principal, unintended consequence of *New York Times v. Sullivan* and its actual-malice rule: It turned the libel trial away from what the defendant said about the plaintiff to a scrutiny of how the press put the story together, what reservations the reporters and editors may have had about parts of the story, and why they chose to say one thing rather than another.

This is wrong. It violates the spirit of the First Amendment because it isn't the government's job, through its judicial branch, to second-guess editorial judgment, and yet that is precisely what happens any time a public official or public figure brings a libel suit. A lot of time and attention have been devoted to proposing reforms to correct this defect. Most proposals include an elimination of punitive damages and a return to truth as the primary focus of the trial.

I am in a minority among media-defense counsel, but I believe reforms such as these deserve serious consideration because winning libel cases is not always the same thing as protecting the First Amendment. More-prominent media-defense attorneys, such as Floyd Abrams, oppose the reforms because most would involve abandoning the *New York Times v. Sullivan* standard requiring a public-figure plaintiff to prove that the media knew the story was false or entertained serious doubts as to its truth.

It's a trade-off I am willing to make to get the government out of the editorial process and the reporter's mind. But Powe resents those who won't make the trade-off and who conclude that the proposed reforms are an attack on the First Amendment: "The best explanation for their ridiculous conclusion is that they have wholly internalized the fact that the First Amendment is responsible for their fat wallets—so that an attack on the latter is perceived as an onslaught on the former."

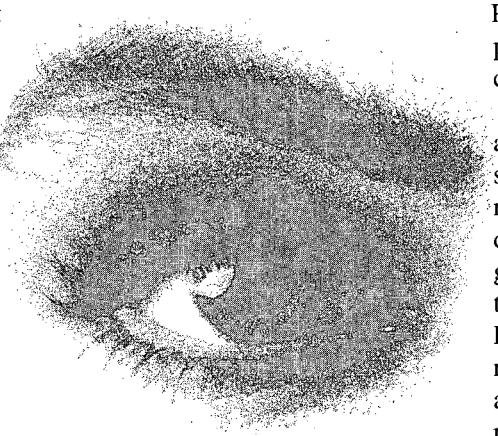
Relax, professor. There is a simpler explanation to the opposition of many media-defense lawyers to the reforms. We win most of our cases today under the *New York Times* standard (which is, after all, our job), so why change? Powe grudgingly admits that this may be an explanation but rejects it because, among other reasons, "it ignores the press's interest in litigation alternatives that cost less and therefore chill less."

Powe's position, however, depends upon the unspoken assumption that libel litigation today is more expensive than other forms of civil litigation. Here is where I think Powe goes wrong. As Walter Olson demonstrated in his recent book *The Litigation Explosion*—and as I know from my personal experience in litigating cases ranging from antitrust to employment discrimination to trade secrets—libel litigation is no more expensive than other forms of complicated civil litigation.

Simply put, libel cases limited to the issue of truth wouldn't automatically be quick or inexpensive. Indeed, in many cases, focusing on two persons' perception of the "truth" and why one perception is wrong while the other is right often leads to more-complex litigation. Protecting the media from punitive damages and keeping the government out of the editorial process are the only significant reasons for supporting libel reform. Reducing litigation expense is a promise that the reforms can't deliver absent a wholesale reform of our current civil litigation system.

"Antitrust" is Powe's weakest chapter, and I suspect this is because Powe doesn't have a significant background in antitrust. He appears to accept the ACLU argument that the antitrust laws aren't working to prevent the concentration of media ownership, and he half-heartedly endorses stricter, media-specific antitrust laws. Yet there is more news and information available from more sources with more points of view in today's market than at any time in the past. The "good old days" Powe refers to were, in retrospect, not that great compared to today.

As Robert Bork, Yale Brozen, Richard Posner, and especially Dominick Armentano have demonstrated, antitrust laws have been primarily used over the past 100 years to protect inefficient businesses, not consumers. If the antitrust laws had worked "as well as hoped," there would be less, not more, competition in the media.



Are media lawyers bandits?

The press needs defending, and the First Amendment is the libel lawyer's weapon of choice. It is easier to claim First Amendment protection than to litigate the "truth."

The most impressive part of Powe's book, however, is his discussion of two competing "models" of the First Amendment. One is "the public's right to know" model which, as Powe demonstrates, is a double-edged sword. One edge "grant[s] the press preferred status among all communicators...[and] elevate[s] the press as the public's surrogate in vindicating the public's rights." The other edge is far more dangerous and "uses the government as a surrogate for the public and regulates the press in those ways essential to seeing that the public's right to know receives vindication in fact as well as rhetoric."

It is this edge of the sword that has been used to deny important First Amendment protection to broadcast media. As such, the right-to-know model is inherently flawed. As Powe observes: "The right to know is not a right; it's a slogan. Furthermore, it is a dangerous slogan, because it instantly invites inquiry into the actual performance of a newspaper. Instead of giving the press more rights, it runs the risk of denying the press its most sacred possession, its autonomy."

The "fourth estate" model of the First Amendment avoids this risk, viewing the press, in Justice Potter Stewart's phrase, as "a fourth institution outside the government to check the potential excesses of the other three branches." Powe argues that this model "protects the press as an autonomous, independent check on government."

He demonstrates this in an excellent analysis of the Supreme Court's 1974 decision in *Miami Herald v. Tornillo*, which reversed the Florida Supreme Court and declared unconstitutional a Florida law guaranteeing a political candidate attacked by a newspaper the right to reply. Powe shows that the wrong edge of the right-to-know model could have produced a different result. After all, doesn't the public have a right to know the candidate's side of the story? Should the press be allowed to abuse its privileged position to keep this information from the public?

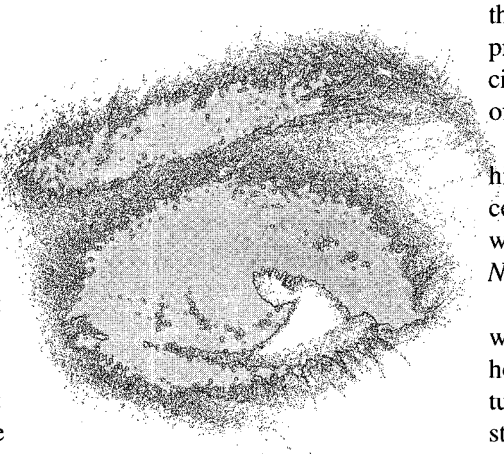
It's an argument the Supreme Court accepted in its 1966 decision in *Red Lion Broadcasting* upholding the constitutionality of the Federal Communications Commission's Fairness Doctrine, which required broadcasters to cover both sides of controversial issues of public importance. Indeed, the Florida Supreme Court relied upon *Red Lion* in upholding the constitutionality of the Florida right-of-reply law in Tornillo.

Mark Graber would obviously like *Red Lion*, even though he doesn't mention it in *Transforming Free Speech*. Graber is no friend of the First Amendment, and if he wouldn't go as far as Yale law professor Owen Fiss, who has argued in recent law review articles that the government has the power and obligation under a "right to know" model to "put on the agenda issues that are systematically

ignored and slighted and allow us to hear voices and viewpoints that would otherwise be silenced or muffled," he nevertheless wants to place significant restrictions on existing First Amendment freedoms.

"The increasingly monopolized media, many charge, do not reflect the full spectrum of political opinion in the United States and do not provide citizens with all the information they need to make responsible choices," writes Graber, who is clearly sympathetic. "In short, disparate economic holdings are affecting the capacity of elected officials to deliver programs responsive to the needs and sentiments of the majority of Americans."

Graber's chilling solution to this perceived problem goes something likes this: Money is not speech. Accordingly, the government can prohibit you from using money to exercise your First Amendment rights if by doing so you are spending more than "the average member of the community can afford to invest similarly." As the Supreme Court noted in the mid-1970s in striking down campaign finance laws that limited the amount private citizens and corporations could spend to support candidates and ballot propositions: "The concept that government may restrict the speech of some elements of our society in order to enhance the relative voices of others is wholly foreign to the First Amendment."



Mark Graber believes that the times require a muzzling of rich people so that politically correct views will have a better chance to be heard.

But if Graber's policy views are unworthy of the First Amendment, his scholarship is not. In a nifty piece of revisionist history, he shows how Zechariah Chafee—whose 1920 book *Freedom of Speech* has been described as the "Bible of civil liberties questions" and the starting point for all discussion for "two generations of free speech advocates"—"transformed the constitutional defense of free speech by treating expression as a functional requirement of democratic government, rather than as an aspect of a more general right of individual liberty. His works deliberately obscured earlier libertarian arguments that intimately connected the liberty of speech with the philosophical and constitutional principles underlying the liberty of contract."

Graber shows that in the late 19th century, long before the U.S. Supreme Court ever did so, state-court jurists with a libertarian perspective used the 14th Amendment to apply First Amendment restrictions to state and local governments. Indeed, long before *New York Times v. Sullivan*, libertarian jurists had issued state-court decisions holding that public figures in libel cases had to establish that defamatory statements made about them were made in reckless or intentional disregard of the truth.

Graber's chapter on these "conservative libertarian" jurists is an eye opener. "Government had, in their view, no more business interfering with a person's liberty to say and hear what he wished than with the liberty of a person to buy and sell what he wished....Like earlier Jeffersonian and Jacksonian thinkers, they argue that the system of private property was a necessary, if not a sufficient, condition of a functional system of free speech."

But so successful were Chafee and his disciples in obscuring this 19th-century libertarian tradition that you won't find these cases mentioned in *New York Times v. Sullivan.*

You may well wonder why Graber went to all this trouble, given his open hostility to the views of these 19th-century libertarians. His point, if I understand it correctly, is that there is no consistent philosophical and constitutional defense of free speech but that, instead, there have been different defenses based upon the needs of the times. The late 19th century had one theory; the post–World War I period another; and Graber believes that what the times today require is a muzzling of rich people so that presumably politically correct views will have a better chance to be heard.

Graber calls this "a preliminary sketch of a new general theory of the First Amendment...a political libertarian approach to free speech problems," but the words don't fit the music. There will be nothing libertarian about Graber's picture once it is complete, and the future of freedom will be enhanced if Graber's sketch remains preliminary. As they are colleagues at the University of Texas, perhaps Graber ought to spend more time talking with Lucas Powe. ■

Contributing Editor Michael McMenamin is a lawyer with Walter, Haverfield, Buescher & Chockley in Cleveland.

COLD-FUSION CONFUSION

By Oren Grad

More than two and a half years after B. Stanley Pons and Martin Fleischmann at the University of Utah stunned the world by announcing that they had achieved nuclear fusion in an electrochemical cell—a modest, room-temperature apparatus involving little more than a glass jar filled with heavy water, platinum and palladium electrodes, and a low-voltage

Too Hot to Handle: The Race for Cold Fusion, by Frank Close, Princeton, N.J.: Princeton University Press, 376 pages, $24.95
Fire from Ice: Searching for the Truth Behind the Cold Fusion Furor, by Eugene F. Mallove, New York: John Wiley & Sons, 334 pages, $22.95

battery—the truth about cold fusion remains elusive.

The scientific community is split on the matter. The skeptical majority holds that cold fusion died a well-deserved death within months of the March 23, 1989, press conference where it was revealed to the world. Pons, Fleischmann, and their colleagues couldn't provide the data needed to substantiate their claims, it is said, and several prominent laboratories that had jumped into the fray could not replicate their results, despite the apparent simplicity of the experimental setup required. According to this view, the only real question remaining about cold fusion is why two respectable chemists went off the deep end in pursuit of a delusion.

Yet beyond the public eye, a small group of experimentalists and theorists continues to pursue this elusive goal. Few, if any, of them believe that they fully understand just what accounts for the strange observations that continue to be reported from laboratories around the world. But most are convinced that cold fusion is real—at the very least, a previously unappreciated physical phenomenon, possibly of profound theoretical importance. And some go further, envisioning astonishing new technologies that will be made possible by the taming of nuclear fusion.

So cold fusion still lives—and if its more-enthusiastic proponents are correct, it may yet have a revolutionary impact on our lives. Now two recent books offer the nonspecialist reader an inside view of the cold-fusion controversy. Frank Close's *Too Hot to Handle* and Eugene Mallove's *Fire From Ice* provide generous helpings of fusion science along with detailed reportage of the convoluted events surrounding the cold fusion announcement, its prelude, and its aftermath.

Did two respectable chemists go on a wild goose chase, or is cold fusion crazy enough to be real?

Both authors are well qualified to interpret the cold-fusion controversy for the public. Close, a theoretical physicist affiliated with the Oak Ridge National Laboratory in Tennessee and with Britain's Rutherford Laboratory, has written previously about science for a general audience. Mallove is a veteran science writer with a background in engineering and the physical sciences; he served as chief science writer in the MIT News Office during the unfolding of the cold-fusion story. The authors come to radically different conclusions that reflect the schism within the scientific community about cold fusion.

For more than 40 years, scientists have been tantalized by the prospect of harnessing nuclear fusion. The potential reward is immense: a virtually unlimited source of energy. The challenges are equally immense, for as yet scientists have come up with only one basic way to approach the problem, by mimicking the only working fusion reactor in the neighborhood—the sun. The concept is straightforward, but the engineering difficulties have to date been insuperable.

The "hot fusion" community has spent billions of dollars and countless scientist-years laboriously refining complex reactor prototypes of two basic types. The first, and more popular, type is designed to confine a multimillion-degree plasma for an extended period of continuous fusion. The second, closely linked to weapons research, uses powerful laser beams to vaporize pellets of fusion fuel for a rapid-fire stream of minibursts of energy production.

Despite considerable scientific progress on both fronts, practical energy production from either method remains at best billions of dollars and decades in the future. Against this background, Pons and Fleischmann—chemists respected in their field but unknown to the fusion community—professed to have found the secret of practical fusion in a primitive contraption that could have been constructed in a high-school science lab.

When nuclear and plasma physicists examined the data reported by Pons and Fleischmann, and by colleagues who claimed early on to have obtained similar results, their astonishment at the initial claims only grew. The cold-fusion proponents argued that they had achieved a nuclear reaction because the sheer quantity of excess heat generated by some of their electrochemical cells was inexplicable by any chemical mechanism. But to the physicists, this made no sense.

Nuclear physics holds that the reaction in question, the fusion of two nuclei of deuterium (a heavy form, or isotope, of hydrogen), should generate any of three possible outcomes: a helium-3 isotope plus a neutron, a tritium nucleus (another hydrogen isotope) plus a proton, or a helium-4 isotope and a gamma ray. Each alternative is associated with a particular release of energy, some of which would be captured as heat in a working fusion reactor. In high-temperature plasma fusion theory and practice, the first two alternatives predominate, while the third occurs only rarely.

All of the key reaction products were reported from cold-fusion experiments, but always in the wrong proportions—and in

particular, in amounts grossly inadequate to explain the magnitude of the claimed energy production.

The measurement of nuclear products such as tritium, helium, and neutrons involves plenty of subtleties that can trap the inexperienced or unwary. Had the chemists, inexperienced in such techniques, simply been fooled by erroneous data? When a number of respected nuclear-physics groups were unable to replicate the Utah results, the suspicions of the skeptics grew.

And when closer examination of preliminary data from cold-fusion experiments revealed numerous gaps and inconsistencies, many reached the obvious conclusion: There was nothing to get excited about in those electrochemical cells. Sloppy technique, yes; mildly interesting quirks of electrochemistry, maybe; wishful thinking, certainly; a dash of petty fraud, perhaps—but no nuclear fusion.

Frank Close appoints himself spokesman for the nuclear and plasma physics community and uses *Too Hot to Handle* to sort out the mess and to explain just how and why Pons and Fleischmann went wrong. To that end, he goes to great lengths to demolish the early experimental results on cold fusion, arguing that they were unreliable at best.

Close takes special interest in a disputed gamma-ray measurement that Pons and Fleischmann offered as evidence for the release of neutrons. Tapping every conceivable source, down to a glimpse of an instrument display captured in the Utah lab by a TV news crew, Close explores that particular mess in forensic detail. He is similarly skeptical of reports of helium and tritium production.

And he takes considerable offense at the behavior of Pons and Fleischmann and the University of Utah—their use of a press conference, rather than more-established scientific channels, to communicate important findings; their rush to file patent applications, with their consequent unwillingness to reveal possibly critical technical details; their appeal for federal funding, outside of the usual channels of peer review.

Such breaches of scientific decorum, though not directly relevant to the scientific merits of cold fusion, deepened the suspicions of the skeptics. Without saying so explicitly, Close seems to draw much satisfaction from the task of demolishing Pons and Fleischmann's case, as though he were delivering their just reward.

Yet skepticism and experienced judgment can cut both ways. Perhaps the chemists could not be trusted to measure nuclear products accurately or to judge when a new phenomenon could be accommodated within the bounds of nuclear theory. But the physicists were equally unqualified to dismiss so casually the results of the calorimetric techniques used to measure the heat output of electrochemical cells.

And Fleischmann, at least, was known as one of the most distinguished practitioners of the subtle art of electrochemistry. To him, the heat output from some of the cells was as incompatible with known electrochemistry as physicists thought it to be with known physics. Call it nothing more than gut feel, but he and Pons, along with a handful of other groups that obtained anomalous results early on, were convinced that they were seeing something new and profoundly important.

So they carried on, in the face of establishment scorn, after the early fuss died down. And though some lost faith when they couldn't replicate early results, others joined as word of remarkable findings percolated through the scientific grapevine.

Their work continues, and in *Fire from Ice*, Eugene Mallove explains why. Where skeptics saw messy and nonreproducible data and concluded that findings were unreliable, believers saw a subtle phenomenon that was exquisitely sensitive to poorly understood details of the experimental design, and they set out to refine their experimental methods.

Mallove argues that, for all of the very real problems with cold-fusion reports, the sheer mass of provocative results from laboratories around the world now reflects a degree of consistency and reproducibility that skeptics, blinded by their preconceptions, have failed to recognize.

By his comprehensive account, these results include the production of large amounts of excess energy by electrochemical cells of various designs, erratic but sometimes long-lasting power bursts from such cells, more-solid findings of the various nuclear-reaction products, contrasting results from more-careful control experiments, and the extension of intriguing findings to more-varied experimental setups, including some that are not electrochemical cells at all.

Mallove acknowledges legitimate criticisms of Pons and Fleischmann's behavior but considers them largely irrelevant to what he sees as the real news about cold fusion: Provocative experimental results have steadily accumulated to such an extent that their significance cannot be denied.

Unfortunately, the reader who approaches these two volumes seeking a debate on the scientific case for cold fusion will be disappointed: It takes two to tango, and one of the authors—Close—doesn't want to join the dance.

Close *knows* that cold fusion is a delusion, so he concentrates on the prosecution of Pons and Fleischmann for their transgressions, wasting little ink on irrelevant facts that might undermine his forensic purposes. So far as he's concerned, the ongoing work in the field essentially doesn't exist. Writing in an authoritative voice, Close will sound convincing to the uninformed. Yet he does the reader a grave disservice by ignoring the bulk of the relevant data.

Mallove, by contrast, knows that he has a difficult case to

make in the face of the common wisdom. He states his biases clearly at the outset and then lays out in detail the evolution of cold-fusion research, with its ups and downs, in the hope of convincing the reader that the field has been unfairly neglected.

For those readers who want to see for themselves, Mallove includes an excellent bibliography and resource guide. Thus, *Fire from Ice* is a much more useful volume for the reader who wishes to understand the scientific issues at stake and their potential implications.

Mallove finds the argument for cold fusion "compelling." He makes a strong case that the mass of evidence is too large and provocative to ignore. But he can't prove any more than that: Conclusive evidence just isn't in yet.

And in judging the evidence, it's important to bear in mind that the sharp dichotomy between skeptics and believers obscures the fact that there are more than two possible verdicts. Cold fusion may be nothing more than experimental artifact, as Close asserts. It may indeed be a previously unappreciated form of nuclear fusion which can be harnessed in the form of revolutionary new technologies, as its most-visionary proponents contend. But it's also possible that "cold fusion" may be real, in the sense of being a previously undiscovered physical phenomenon, but not nuclear fusion. Or it may indeed be nuclear fusion, but the technological applications envisioned may prove just as elusive as those of hot fusion.

The common use of radically polarized alternatives to characterize the cold-fusion debate reflects the sorry extra-scientific side of the story. Federal support for traditional fusion research has been under siege for some years now, and the potential success of cold fusion poses an even greater threat: Taxpayers may be unwilling to spend hundreds of millions of dollars a year for something as elusive and potentially dangerous as traditional fusion if a cheap and benign new energy source seems within reach.

From day one, disputes about the validity of the cold-fusion experiments have been bitter. Each side has freely accused the other of fraud and of suppressing scientific evidence. My own limited contacts with people on both sides of the debate suggest that these two books, tendentious as they are, don't come close to capturing the full intensity of the feud.

It may be this intensity that accounts for the efforts by both authors to draw on the cold-fusion affair for didactic purposes beyond cold fusion itself. For Close, cold fusion is a morality tale: "This is not the way that science should proceed," he writes. "It is important that the public see that the test-tube fusion story is not typical of normal science and that there is a received body of opinion in the scientific community that the episode was unacceptable." If the public came to see the "farce of test-tube fusion" as typical of science, he muses, the young might give up on science as a worthy career; nay, public confidence more broadly might dissolve, and with it, government funding.

Close's attitude betrays a curious mix of vanity and insecurity. It also suggests that he's more than a little bit out of touch with the real world. Were the public's faith in and expectations of science as fragile as Close seems to imagine, he and his colleagues would have been out of a job long ago.

Again, Mallove's treatment is simultaneously more comprehensive and more nuanced. Acknowledging that a certain amount of inertia is critical—science would degenerate into chaos if all theories were discarded at the slightest hint of contradiction—he nevertheless argues that there are times when traditional rules of thumb can become dysfunctional.

In this connection Mallove is especially interested in the balance between theory and experimental data in science. Even under normal circumstances this is a subtle matter. It's not uncommon for theory to lag far behind experiment. A spectacular recent example is the discovery of ceramic materials that become superconductive at relatively high temperatures, a development immediately acclaimed by scientists despite their inability to explain it.

Yet as Mallove documents clearly, one criticism serves as the rallying cry of cold-fusion skeptics: Since the purported reactions did not yield nuclear products of the type and quantity required by existing theory, the experiments must be faulty. The other possibility, that the theory itself might sometimes require modification to account for new experimental data, has generally been dismissed out of hand.

Mallove describes the rabid anti–cold-fusion stance maintained by the prestigious scientific journal *Nature*, and he is concerned more generally about the stifling effect that the scientific peer-review process can have on unconventional ideas. He argues plausibly that leading scientific journals ought to publish a wider range of provocative new ideas, perhaps accompanied by critical reviews, to facilitate scientific debate.

But as Mallove himself points out, plenty of alternative mechanisms grew up for the distribution of "subversive" cold-fusion information, including computer networks, fax machines, and the telephone. Indeed, were it not for the existence of such channels, cold fusion might indeed be dead, and *Fire from Ice* would never have been written.

For all of their differences, I suppose that Mallove might agree with Close about one thing: On its face, cold fusion is a crazy idea. But only time, and more research, will tell for sure whether it's crazy enough to be real. Stay tuned: This story is not over just yet. ■

Oren Grad is a consultant on science and technology policy who is currently a visiting scholar at the MIT Center for International Studies.

BIG GIRLS DON'T CRY

By Ellen Frankel Paul

A quarter-century after the reemergence of feminism out of the cultural maelstrom of the 1960s, some of its most devoted adherents sense that something has gone woefully amiss. For these now middle-aged feminists—participants in the heady excitement of the movement's early days of encounter sessions, female bonding, and male bashing—the thrill is gone,

Prisoners of Men's Dreams: Striking Out for a New Feminine Future, by Suzanne Gordon, Boston: Little, Brown & Co., 324 pages, $19.95
A Fearful Freedom: Women's Flight from Equality, by Wendy Kaminer, Reading, Mass.: Addison-Wesley, 250 pages, $18.95
Feminism Without Illusions: A Critique of Individualism, by Elizabeth Fox-Genovese, Chapel Hill: University of North Carolina Press, 347 pages, $24.95
Sexual Personae: Art and Decadence from Nefertiti to Emily Dickinson, by Camille Paglia, New Haven: Yale University Press, 718 pages, $35.00

and they feel very much on the defensive. Young women seem indifferent to the buzzwords of "patriarchy," "oppression," and "victimization" that so galvanized these women who came of age in the '60s. Graying revolutionaries of gender, comfortably ensconced in tenured slots at fashionable universities, they still think of themselves as crusaders, on the cutting edge. Yet their female students, they lament, view them quite differently: as vaguely comic relics, bra burners, responsible for the social disintegration of the family, divorce without alimony, rampant teenage pregnancy, and rapists behind every bush. Since no fate could be worse for the ideologically au courant than atavism, bookstores of late are bulging with exculpatory tomes, mostly blaming something other than feminism or other-than-my-kind-of-feminism for these hard times.

Isn't all of this angst a bit overwrought? Hasn't feminism on its own terms been an enormous success? Are there any male bastions left (urinals aside)? Women surgeons, coal miners, lawyers, anchorpersons, chief financial officers, firefighters, etc., are so commonplace that no one raises an eyebrow. Perhaps feminism has been too successful, too soon, for its own good? But this "success" is bittersweet at best, noxious at worst, in the view of three of our four authors. Suzanne Gordon, Wendy Kaminer, and Elizabeth Fox-Genovese offer up very different accounts of feminism's malaise and depressingly familiar prescriptions for its resuscitation. Our fourth author, Camille Paglia, the Madonna of aesthetic criticism, lobs an incendiary bomb into the very bosom of feminist dogma and cackles as each blood-drenched tenet whizzes by.

Freelance journalist Suzanne Gordon's *Prisoners of Men's Dreams: Striking Out for a New Feminine Future* is a pastiche of radical feminist bromides intermingled with interviews of upwardly mobile professional and businesswomen. These women, mostly in their 30s and 40s, bought into the "having it all" nostrums of what Gordon calls "equal opportunity feminism." Their very success has led some to deep disillusionment over the compromises that "the market" compelled them to make in order to succeed, or has left others so hardened, masculine, unappealing, and robotic that they have lost all human emotion.

Gordon deploys these hapless creatures to dramatize the bankruptcy of Betty Friedan's *Feminine Mystique* feminism, a feminism that encouraged women to compete on equal terms with men in a man's world. This feminism had as its "ultimate goal...traditional American success—making money; relentlessly accumulating possessions; capturing and hoarding power...grasping and clinging to fame, status, and privilege."

It is this liberal, equal-opportunity feminism that has failed, Gordon insists, for it undermined the true feminism, the one that promised the transformation of capitalism and its grubby values. This "transformative feminism" was "remarkably naive" in thinking that merely substituting female players for males in the power structure would infuse society with feminine values of caring and compassion, making the world a very different place. What happened instead, much to Gordon's dismay, was that "the marketplace"—the evil genie of this tale—proved resistant to feminine attributes. Rather than revolutionizing capitalism, successful businesswomen became just like their male counterparts: hard-bitten, money-grubbing, egotistical, back-stabbing, capitalist tools.

Contrary to transformative feminism's predictions, women in power behaved exactly like men. Is this, then, cause for rejecting transformative feminism? Gordon thinks not. Transformative feminism, a feminism of caring, not competition, of collective action, not individual aspirations, must be revitalized. Women must recapture the collective rapture of the late '60s "consciousness raising groups" and rededicate themselves to transformative objectives.

Women's problems are social not individual, Gordon insists: Throw your wretched selves into a "National Care Agenda," and happiness will be yours. A conspiracy of Reaganism, capitalism, and equal-opportunity feminism has robbed the social sector, denigrated the female-dominated caring professions, defrauded our children of a decent public education, littered our streets with homeless people, and we women must do something radical about it.

Now, for all of Gordon's supercharged rhetoric—in the America-is-going-to-hell-in-a-handbasket vein—her "National Care Agenda" is ludicrously tame: restore the 40-hour work week so that overachievers of both sexes will have more time to spend with their families; enact a national policy of one month paid vacation for all workers, as the enlightened Europeans have; solve the day-care problem; pass a universal health-care program; provide affordable housing for the homeless and well-financed public education for the children; prod Congress to pass parental-leave legislation. All of this, naturally, will be paid for out of a 50-percent cut in the defense budget.

Gordon's radicalism dribbles down to sodden welfare statism. Even if a "National Care Agenda" were adopted in its entirety, a prospect as disconcerting as it is unlikely, how would this transform society? It would certainly beggar our economy, impair its competitiveness on international markets, and impoverish us all. Hardly the kind of future that women should embrace as a way out of the tensions of juggling work, kids, and husband.

Gordon reifies the market (the market programs us to believe; the market compels us to behave; the market tyrannizes us), and she embraces the liberal canard that the market is a zero-sum game. Her anti-individualism blinds her to the truth that the market is nothing more than all of us acting to maximize our opportunities, to achieve our individual goals. The market isn't a collective beast with values and a will of its

own. Individuals have values and they act to achieve them—they barter, truck, and exchange.

Gordon scorns the values that many women have adopted as the price of success and complains that success may not have made all women happy. That's life. Men make compromises to achieve success, and they know that they cannot have it all. They have learned over the centuries not to whine about it. Let's hope that Gordon and her interviewees learn this lesson soon, before anyone takes their carping too seriously and destroys what is left of our personal freedom and its natural byproduct, our capitalist economy.

Attorney Wendy Kaminer's *A Fearful Freedom: Women's Flight from Equality* represents precisely the sort of equal-rights feminism that Suzanne Gordon warns against. The antipathy, to be sure, is mutual. Kaminer speaks for a feminism under siege from both the "greed become respectable" Reagan right and the caring/protectionist feminist left. She strives assiduously to rescue "egalitarian feminism" from the Reaganauts who blame it for all of our social ills and from the protectionists, the female chauvinists who see women as the "guardians of an ethic of caring." A constant refrain throughout *A Fearful Freedom* is that "only women become pregnant" and that "motherhood is a primary obstacle to equality." Kaminer rails against these biological facts and against a feminism of caring that only perpetuates the myth of a female nature that incapacitates women for equality.

In Kaminer's world of "imagining," it would not be "remarkable or incredibly hard for women to have careers and be parents too—a world of female doctors and male nurses and househusbands, equal numbers of male and female senators, and day-care centers staffed by men and women who make as much money as investment bankers....In my ideal world, sex, like race, is not used to measure or predict intelligence, character, talent, ambition, or desire. Women are not presumed to be more nurturing, compassionate, and intuitive than men."

The caring feminists, Kaminer argues, are the heirs of the turn-of-the-century protectionists, women among them, who sought legislation to limit the hours of labor and to set minimum wages for women out of a misguided desire to protect their procreative capacities. (A good example, one might add, of how the progressivism of one era becomes the reaction of another.) Feminists who advocate special pregnancy disability benefits, or child-care leaves, or more-flexible work schedules only perpetuate the 19th-century attitude toward women as mothers.

Kaminer, however, is at her most unsatisfying when she tries to differentiate her sort of equality-of-rights feminism from protectionism. Equal rights, it turns out, means something more than the same treatment for women and men. Affirmative action, for example, "isn't protectionism but compensation." Borrowing from the legal philosopher Ronald Dworkin, she argues that a distinction must be made between a "right to treatment as an equal" and a "right to equal treatment." Thus, a white male would have a right to "equal consideration" with a minority or a woman for a law school slot but not a "right to equal treatment." Sometimes treating people as equals does not achieve the desired social goal, and then equal opportunity isn't sufficient to ensure "equal access, much less equal results."

Suzanne Gordon complains that success hasn't made all women happy. That's life. Men have learned not to whine about it.

With this Orwellian some-pigs-are-more-equal-than-others logic, Kaminer jettisons equal rights when its results are inconvenient. For this erstwhile champion of equal rights, it is suddenly acceptable to place advancement of the downtrodden as a "public priority that takes precedence over the right to equal treatment of white males....affirmative action doesn't give minorities special or extra rights."

The more Kaminer tries to flesh out her concept of equal rights, the worse it gets. Economic needs ought to become rights, she argues, and the Supreme Court should constitutionalize welfare rights. And calling a national pregnancy-leave policy "parental leave," as Kaminer suggests, only makes a difference in newspeak. Despite their differences, then, Gordon and Kaminer are not that far apart: Both embrace the zeitgeist of left-liberal statism.

Professor of history Elizabeth Fox-Genovese, in *Feminism Without Illusions: A Critique of Individualism*, shares Gordon's and Kaminer's dismay at the

indifference of young women to feminism, and she, too, thinks feminism has received undeserved blame for many of the social ills that afflict American society. Only by "blaming the victim," all three argue, can we fault feminism for the social decay that seethes around us. Fox-Genovese, however, is more willing than the others to see feminism's radical excesses as in part to blame for the younger generation's disaffection. She attempts to carve out a middle ground for herself, while conceding something to the radical feminists on each of their favorite causes: affirmative action, censorship of pornography, scrapping the "canon" of Western culture.

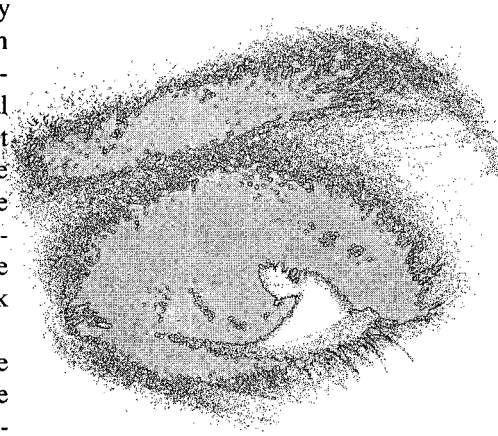
Fox-Genovese's reservations leave her well within the bounds of "political correctness." Her standard procedure is to criticize both the radicals and the neoconservatives, but always the latter more strenuously. Then when she turns to her own position, she typically degenerates into vague generalities, so imprecise that no one could attribute any possibly incorrect thoughts to her. On pornography, she says that she instinctively finds it abhorrent, but the radical feminists' zeal for censorship raises First Amendment concerns, so maybe she would allow a little censorship in the name of preserving community standards. What limits? Who decides? Whose values? Fox-Genovese's style is to duck all the hard questions.

On the "canon" and Western culture her modus operandi is the same. She criticizes those zealots who wish to discard Shakespeare and replace him with "our personal favorites," and then she lampoons the Blooms and Bennetts for blaming the feminists for destroying Western culture by attacking the great works. She concludes, as usual, with an equivocal bow to the diversity crowd, arguing that we shouldn't denigrate the great works but simply expand the list and teach the "canon" from the perspective of the oppressed and excluded.

Fox-Genovese's main mission is not so much to nibble at the edges of academic fashion but rather to indict feminism for sharing, however unwittingly, the same moral foundation of individualism that undergirds American culture. Individualism views the rights of the person as prior to and more important than the collective. It is this supposedly "atomistic" individualism that she deplores, and she sees it rearing its ugly head, for example, in the radical feminists' endorsement of unfettered abortion rights. (She, too, favors abortion, but on different, hazy grounds.)

What Fox-Genovese calls for is nothing short of a revolution in political philosophy, one that would place the collectivity prior to the individual and derive individual rights from the needs of the collective. A historian, not a philosopher, Fox-Genovese offers no real theory of why society ought to take precedence over the individual, or what sort of rights the community ought to grant to individuals. The nature of the collective is also left indeterminate: Is it the church, the town, the nation, what? Again, all the hard questions are sidestepped.

What does penetrate through the fog is that Fox-Genovese has no use for individualism. She says so often enough. Yet when she (half-heartedly) defends American culture, she rhapsodizes about the desirability of preserving our common roots in the Declaration of Independence and the Constitution. These documents reek of individualism. Why would she want to preserve a culture born of them? Is she toying with us? Is she trying to disguise her radicalism? Or is she just being annoyingly inconsistent?



Elizabeth Fox-Genovese has no use for individualism. Yet she rhapsodizes about preserving our common roots in the Declaration of Independence.

Our final exhibit is *Sexual Personae: Art and Decadence from Nefertiti to Emily Dickinson*. In Camille Paglia radical feminism has spawned the enemy that it deserves. Paglia declares that her approach to aesthetic criticism is "sensationalistic," and she delivers. This book is a 673-page tour of the "canon," with a self-proclaimed accent on the "decadent." Paglia disembowels Western culture. Her principal quibble with the "canon" is that it neglects the Marquis de Sade, whom she reveres. There is something in this book to disgust, titillate, and enrage even the most jaded reader.

Paglia's opening bombardment is aimed squarely at the feminists; she blasts every one of their sacred assumptions. On equality of the sexes: "My theory is that whenever sexual freedom is sought or achieved, sadomasochism will not be far behind." On nature as a benign force corrupted by men: "Men, bonding together, invented culture as a defense against female nature ....The very language and logic modern woman uses to assail patriarchal culture

were the invention of men."

On patriarchy: "Feminism has been simplistic in arguing that female archetypes were politically motivated falsehoods by men. The historical repugnance to woman has a rational basis; disgust is reason's proper response to the grossness of procreative nature." On the feminist argument that sex crimes are caused by pornography and the denigration of women: "Serial or sex murder, like fetishism, is a perversion of male intelligence....It is the asocial equivalent of philosophy, mathematics, and music. There is no female Mozart because there is no female Jack the Ripper."

Dismemberments of women and Jack the Ripper's "extraction and public nailing up of the uterus of his victims" occur "not from social prejudice but from *legitimate* fear of woman's alliance with chthonian [infernal] nature." (Emphasis added.) Paglia's woman is a beast, tied to nature's repulsive ooze; she is the "vampire" of Dionysian, "subterranean" forces who constantly sucks men back to the muck. Men are the Apollonian rationalizers who create Western science, aesthetics, culture, and technology as they struggle against the toothed vaginas of the femme fatale. Sodomy, abortion, and male homosexuality are men's valorous attempts to thwart "nature's procreative compulsions" and to "defeat nature."

Men have always dominated art, science, and politics throughout history because of their physiology: "Men are anatomically destined to be projectors." Men are the great conceptualizers throughout history because of male urination: "Male urination really is a kind of accomplishment, an arc of transcendence. A woman merely waters the ground she stands on. Male urination is a form of commentary....To piss on is to criticize." Men are the supreme Apollonian conceptualizers, for male urination leads directly to male concentration and projection.

This would be marvelously entertaining if Paglia were not serious. But she is. A work some 20 years in the making, one evincing impressive erudition, and one of such vast sweep is hardly intended to be frivolous. If taken seriously, Pagliaism is as noxious as the radical feminism that it excoriates. Men who hack up their victims, refrigerate their body parts, and dine on their entrails are front-page news, and they hardly need encouragement or "legitimacy." If women are the demonic, destructive, disgusting creatures of Paglia's ravings, then why not disembowel lots of them?

Paglia's misogyny is pretty nauseating stuff: fetuses as tumors; the menstrual cycle as primordial muck; the premenstrual woman as "hearing signals from the reptilian brain"; menstruation and childbirth as "affront[s] to beauty and form." She combines this misogyny with a Freudian-Nietzscheian-Sadeian vision of nature and the irrefragable antagonism of the sexes. Aside from reducing feminists to apoplexy and garnering much media attention for herself, Paglia hasn't effectively argued against feminist assumptions. Radical feminism needs to be confronted with logical, well-crafted arguments, not luminous insights. Paglia's outrageousness will redound to the benefit of her adversaries, whose own excesses will look temperate by comparison.

In Camille Paglia, radical feminism has spawned the enemy that it deserves. She calls her approach "sensationalistic," and she delivers.

But Paglia has filled a vacuum. Antifeminist criticism is practically a null set. Few are willing to endanger their careers by taking on the excesses of the feminists. Fewer still are willing to waste their time producing a critique that is effectively unpublishable. (Even Paglia's book, which had obvious sales potential beyond the usual few hundred for academic books, was turned down by many publishers.)

Women editors are firmly ensconced in trade publishing houses and university presses; women professors are tenured in universities in record numbers, many of them in women's studies departments and most of the rest laboring in feminist vineyards; feminists have remade the English language in their image and have thoroughly intimidated liberal white males. Why, then, do the feminists of the 1990s feel frustrated and under siege? Perhaps, for a movement founded on victimhood, quick success is too hard to handle. Or perhaps they have finally discerned that their life's work, the ventilation of their personal frustrations, is an "achievement" that is only appreciated by the narrowest of audiences—themselves.

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WHO CARES ABOUT APATHY?

By Michael Barone

The urge comes on political journalists, some time after one presidential campaign is over and before the next has begun, to explain in greater depth the things they have been reporting on in snippets and dispatches hurriedly filed from paper-strewn desks or portable computer modems clumsily plugged into pay phones. The result is the appearance

Minority Party: Why Democrats Face Defeat in 1992 and Beyond, by Peter Brown, Washington: Regnery Gateway, 350 pages, $21.95
Why Americans Hate Politics, by E. J. Dionne Jr., New York: Simon & Schuster, 430 pages, $22.95

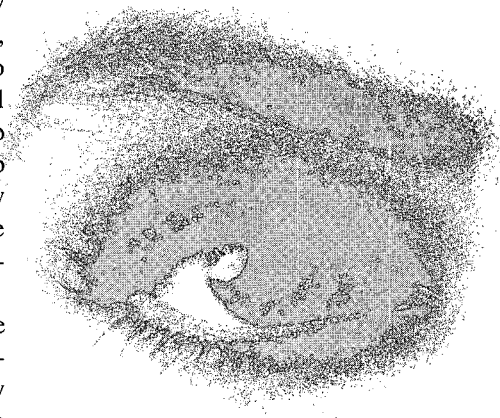
after the (in most reporters' view) dismal campaign of 1988 of an unusually good crop of political analyses in 1990 and 1991, including Peter Brown's *Minority Party* and E.J. Dionne Jr.'s *Why Americans Hate Politics*. Both books are written with passion as well as with thorough knowledge of the facts and admirable fairmindedness.

It's not hard to see whose side Brown, chief political writer for Scripps Howard, is on: He thinks the Democrats are not only doomed to lose, but they deserve to lose presidential elections as long as they keep behaving as they have. He has a fine feel for the grittiness of everyday life and, much more than most reporters, has a sense of what life looks like to ordinary voters. Unlike many political reporters, he keeps referring to reality: to the white middle class of Macomb County, Michigan; to the phenomenally high crime rates among blacks; to the horrors of commuting; to the rise of Hispanics and other immigrants.

The picture he paints is not pretty. The Democrats are doomed, he suggests, because to "the forgotten middle class" they seem—and are—too sympathetic to the black underclass, excusing criminals and subsidizing the inert. It is as if the Democrats were stuck in a time warp, somewhere between 1965 and 1974, where every domestic issue is civil rights and every foreign issue is Vietnam, where the United States of 1991 is the Mississippi of 1964 and the oppressor of a rising and virtuous Third World. Their constant urges toward redistribution, centralization, and celebration of victimization persistently lead them in the wrong direction.

There is quite enough truth in Brown's utterly persuasive book to explain why the Democrats have lost before and to explain why they're about to lose again. What is unclear is why they persist in such error. In their refusal to confront reality, and notably the successes of their rivals, they resemble the Republicans of around 1945, who were temperamentally unable to concede that anything Franklin Roosevelt did had helped end the depression or win the war. The Democrats have lost the capacity, necessary to winning any political campaign, of understanding things as they are.

They seize on unworkable nostrums, like Kevin Phillips's populist politics—which Brown definitively shows to be nonsense. They imagine that championing the minimum wage, universal health insurance, and extended unemployment benefits will win them votes, without realizing that the economy has changed and that the beneficiaries of these measures are not breadwinners, as they were up through the 1960s, but mostly second and third earners in households who are not likely to be voters. They fail to realize that the Democratic core constituency is, literally, dying out, and that young voters may well be turning out to be the most Republican age cohort in history.



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Brown's insights enabled him to predict, even when Michael Dukakis was leading George Bush by 17 points in the opinion polls, that the Democrats wouldn't win, and to explain why.

Dionne, in contrast, seems to think that the Democrats were actually on the road to victory at that point and that the Republicans ended up winning only by waging what he, like most members of the Washington press corps, describes as an ugly campaign. In this he is clearly wrong. Voters in July 1988 didn't have, and knew they didn't have, as much information as they would have before they made their final decision, and the campaign itself was no uglier than one might expect in an adversarial process.

Dionne indulges in the ritual decrying of the Bush campaign's Willie Horton ads, without noting that they were entirely accurate and that the position Dukakis articulately backed for 11 years—weekend furloughs for prisoners sentenced to life without parole—is one for which no rational argument can be made. There's nothing unfair in attacking an opponent for taking a lunatic position. Indeed, one could argue that you have a moral obligation to bring such idiocy to the attention of the voters. Certainly the number of Americans today who think things would be better if Dukakis had won is very small.

Fortunately, Dionne's capitulation to the liberal bias of most of the press corps

is peripheral to his main argument and uncharacteristic of the rich substance of his book. He argues that both parties are stuck in the past—the Democrats some time in the late 1960s, the Republicans in 1981—both in their electoral and in their governing politics. He shows how idea-driven amateurs, conservative and liberal, changed the Republican and Democratic parties from the 1960s on.

Dionne seems to have read just about every book and obscure pamphlet on political philosophy, and *Why Americans Hate Politics* may very well be the best intellectual history of American political thought since World War II. Dionne is a sensitive, fair-minded reader, showing a fine appreciation of hitherto obscure (to me, at least) thinkers from the tradition-minded right to the New Left. He shows how different sets of ideas interlock with others—what libertarianism, for example, has in common with the New Left.

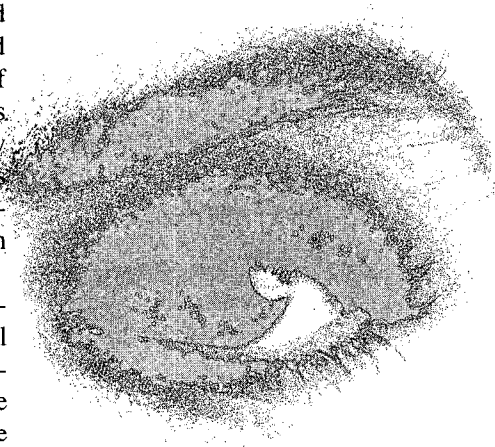
Dionne admires idealism and intellectual rigor. But he shows how intellectual inflexibility and intellectuals' lack of interest in what bothers voters have kept people arguing over values and ignoring the more humdrum business of government.

That development, he argues, is "why Americans hate politics." They are turned off by shrill appeals to personal values, Dionne suggests, and dismayed that peripheral matters crowd out debate on macroeconomic and major foreign-policy issues. Certainly, most people share little of the affection that political junkies like Dionne and me have for the political process.

But is that a bad or an unusual thing? The adversarial parry and thrust of partisan maneuver is seldom an uplifting sight, and sensible people seek their civic uplift, and personal fulfillment, elsewhere.

The attachment of Americans to the bedrock of basic democratic values and to guarantees of personal freedom is strong—I would argue, has never been stronger. Their response to the political choices before them has not been irrational, even if it is not exactly what you or I would have decided. Consider the much-maligned 1988 election: Americans had to choose among some 17 candidates about whom they knew little or nothing at all, and they ended up with the man who, it seems pretty clear in retrospect, was strongest in experience and closest to most voters' views on most major issues.

Like many reporters, Dionne rhapsodizes about Jesse Jackson's apparent rapport with white working-class voters in places like Sheboygan, Wisconsin. But that rapport produced few votes—most white Jackson votes come from the graduate-student proletariat. And would America and the world be better off with a president who wants to move toward socialism, sees Third World dictatorships as models to be followed, and literally embraces the likes of Fidel Castro and Yasser Arafat?



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The Democrats come out worse in Dionne's book than the Republicans. He recognizes that the Democrats seem caught up in an older time warp, leaving them less in touch with reality and more incapable of winning national elections. The Republicans, in his view, are grappling with the strains between traditionalism and libertarianism, between economic and cultural conservatism—the usual problems of a majority party.

Both parties, in the months since he wrote, have made faltering moves toward offering new domestic policies, but nothing as yet that greatly undermines his scorn. But is it such a bad thing if, as his title puts it, Americans hate politics? "By expecting politics to settle too many issues," Dionne himself writes, "we have diminished the possibilities of politics."

In these relatively peaceful, prosperous times, Americans may not be looking to politics or government for personal uplift or inspiration, and that isn't such a bad thing. Yes, the process could work better; yes, we have a problem with a politics run by amateurs who are so dazzled with their ideas that they can't see the world around them; yes, there are some nagging problems that government might do a better job on. But, hey, the world's going our way. Things aren't quite as bad as they appear to most of us who make our living writing about politicians. ■

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THE FIXERS

By Jacob Sullum

When Milton Friedman and William Bennett traded letters in *The Wall Street Journal* two years ago, each was ostensibly trying to convince the other that he was wrong about the war on drugs. Of course, no one expected Bennett to say, "You're right, Milton. I've been a fool. Let's legalize drugs." Nor did anyone expect Friedman to come around to the prohibitionist

Searching for Alternatives: Drug-Control Policy in the United States, edited by Melvyn B. Krauss and Edward P. Lazear, Stanford, Calif.: Hoover Institution Press, 454 pages, $42.95
Drug Prohibition and the Conscience of Nations, edited by Arnold S. Trebach and Kevin B. Zeese, Washington, D.C.: Drug Policy Foundation, 250 pages, $9.95 paper
Winning the Drug War: New Challenges for the 1990s, edited by Jeffrey A. Eisenach, Washington, D.C.: The Heritage Foundation, 119 pages, $10.00 paper
The Case for Legalizing Drugs, by Richard Lawrence Miller, New York: Praeger, 247 pages, $21.95
The Drug Solution, by Chester Nelson Mitchell, Ottawa: Carleton University Press, 362 pages, $21.95 paper
The Drug Legalization Debate, edited by James A. Inciardi, Newbury Park, Calif.: Sage Publications, 230 pages, $16.95 paper
The Truth About Addiction and Recovery, by Stanton Peele and Archie Brodsky, with Mary Arnold, New York: Simon & Schuster, 430 pages, $22.95
The Crisis in Drug Prohibition, edited by David Boaz, Washington, D.C.: Cato Institute, 148 pages, $8.00 paper

position. Indeed, it would have been startling if the exchange had resulted in any change of opinion on either side.

That's because Friedman and Bennett hold fundamentally different views about human nature and the proper role of government. Like criminologist James Q. Wilson, Bennett argues that government has a duty to help individuals realize their full potential, a goal that is obstructed (he claims) by the use of certain drugs. Friedman believes that the war on drugs is unjust, that it violates people's rights.

Many people find this sort of impasse frustrating. Berkeley law professor Franklin E. Zimring and criminologist Gordon Hawkins explain why in *Searching for Alternatives*, a provocative collection of papers from the Hoover Institution's 1990 drug-policy conference: "Both sides of the decriminalization debate...support their preferred policies for a mixture of moral and prudential reasons, making their proposals impossible to assess objectively and virtually incontestable. If the operative costs of either policy seem too steep, its proponents can always retreat to the moral high ground. At that level the claim that 'adult Americans have the right to choose what substances they will consume and what risks they will take'...is countered by the claim 'that society has [an] obligation to form and sustain the character of its citizenry.'...Nothing could count decisively against either claim."

Zimring and Hawkins thus classify the arguments for and against legalization under two headings: moral and prudential, or, as others have put it, principled and pragmatic. This is a standard distinction; it's convenient and superficially plausible. But it's fundamentally false. The prudential or pragmatic argument is ultimately a moral argument, based on the principle of utility. Zimring and Hawkins suggest that, rather than fight a pointless battle of moral assertions, reformers should engage in research to resolve empirical questions that are relevant to drug policy. But such research can be decisive only if one accepts the underlying premise: We should legalize (or decriminalize) drugs if and only if the measurable benefits of doing so outweigh the costs.

Reformers do not bother to argue for this premise, because they don't have to. Although some people will never be swayed by a cost-benefit analysis, most implicitly subscribe to a crude utilitarianism. This is why Friedman maintains that we need not argue about rights and justice in order to achieve reform. "We all recognize that drugs are currently doing a great deal of harm," he said at the Hoover conference. "What divides us is our judgment about the best means to minimize the harm done by drugs."

Chicago-Kent law professor Randy Barnett, on the other hand, argues in the 1987 book *Dealing with Drugs* that the case for legalization should be based on principles of justice. Indeed, he offers a utilitarian rationale for relying on "a system of properly crafted individual rights" instead of "a system of ad hoc public-policy determinations": "A proper rights analysis would render most legal cost-benefit calculations superfluous and would avoid tragically wasteful (and often irreversible) social experimentation," he writes. "An addiction to drug laws is caused by an inadequate understanding of individual rights and the vital role such rights play in deciding matters of legality."

Pace Zimring and Hawkins, the Friedman and Barnett approaches can be integrated—and in a way that should satisfy both utilitarians and natural-rights advocates. The argument, which Barnett suggests, is that prohibition is costly precisely *because* it violates people's rights. The main problems with the war on drugs are problems inherent in any attempt to ban noncoercive, victimless behavior that many people wish to engage in. This reconciliation of pragmatism and principle is promising, not because it avoids moral argument to focus exclusively on empirical questions, but because it builds on the moral beliefs that most people seem to hold.

For reformers, then, the first priority has to be drug education—*real* drug education. Contradicting the pernicious nonsense spouted by many supporters of prohibition gets people's attention, and it makes them think. Very few people would seriously consider legalization if they believed the portrayal of drug use offered by George Bush and William Bennett.

In this connection, the Washington, D.C.-based Drug Policy Foundation is doing admirable work. In *Drug Prohibition and the Conscience of Nations*, editors Arnold S. Trebach and Kevin B. Zeese reprint Bush's baggie-of-crack speech, excerpts from Bennett's first *National Drug Control Strategy*, and other alarmist accounts of "the drug problem," along with corrective material. Thanks to such efforts, the more-reckless drug warriors may one day see an advantage to telling the truth.

That day has clearly not arrived, since even scholarly books on drug policy include obvious inaccuracies. In *Searching for Alternatives*, for example, former Attorney General Edwin Meese III cites "the birth of over 100,000 cocaine-damaged babies each year." Elsewhere in the same volume, Hoover economist Joel Hay reports: "The U.S. Department of Health and Human Services estimated that 100,000 babies *exposed* to cocaine are born each year in the United States." (Emphasis added.) Even Hay, who argues against legalization, does not claim that all babies exposed to cocaine are damaged by it—only that, as a group, they are more likely to suffer from low birth weight and other problems.

But Meese's error is minor compared to the misinformation offered by Dr. Robert L. DuPont in the Heritage Foundation's *Winning the Drug War*. "The most recent estimate is that last year we had 375,000 crack babies born in the United States," he declares. This figure has been picked up by many journalists, including columnists A.M. Rosenthal and Jack Anderson. But as Dale Gieringer notes in *Drug Prohibition and the*

Conscience of Nations, the statistic does not survive even a superficial analysis, since the National Institute on Drug Abuse reports that the number of women who used crack in 1988 was only 474,000.

It turns out that DuPont's alarming crack-baby factoid is a distortion of results from a 1988 study by Dr. Ira Chasnoff, director of the National Association for Perinatal Addiction Research and Education. Based on a nonrepresentative sample of hospitals, Chasnoff estimated that 375,000 babies were exposed to an illicit drug that year. "Illicit drug" does not mean crack, and, again, exposure does not mean damage. According to HHS estimates, more than two-thirds of crack-exposed babies show no obvious problems at birth. Chasnoff suggests there may be more-subtle, long-term effects, but this claim is controversial.

Until the great, silent majority of illicit drug users speaks up, people will continue to view them as alien and antisocial.

As innocent victims, crack babies arouse much emotion. But since they first registered in the national consciousness fairly recently, misinformation about them is relatively easy to correct. By contrast, propaganda about the effects of drugs on users has had more time to sink in. What reformers tend to dismiss as mere rhetoric, most people accept as conventional wisdom. Meese, for example, asserts that while "alcohol can be used responsibly...and only a small percentage of those who drink liquor become intoxicated...the only purpose of using illicit drugs is to 'get high,' and the inevitable intoxicating effect of such drugs provides the essential difference from alcohol."

Those who have had no experience with illicit drugs and have read next to nothing about them may nod in agreement, but anyone else can only be puzzled by this distinction. Meese appears to be saying that the inherent qualities of illicit drugs make it impossible or very difficult to consume them in moderation—that you can't, say, smoke pot to relax or drink coca tea as a pick-me-up. This is clearly not true. Still, as psychiatrist Norman Zinberg has suggested, the very act of making a drug illegal, by impeding social control, lending symbolic significance to the substance, and creating incentives for higher potency, increases the likelihood that the drug will be used to excess.

Meese also claims that "illicit drugs...do not have a history of responsible use." Yet for centuries South American peasants have chewed coca leaf, and American Indians have eaten peyote; for thousands of years, marijuana has been used throughout Asia and the Middle East for medicinal, ritual, and recreational purposes. Millions of Americans used cocaine, cannabis, and opiates responsibly for decades prior to their prohibition, and the government's own figures indicate that the vast majority of citizens who currently use illegal drugs do so moderately.

Critics of prohibition are often reluctant to talk about responsible use of illicit drugs. They argue, correctly, that it's important to distinguish between advocating a right to use drugs and advocating drug use itself. But silence on the topic of responsible use is dangerous. For one thing, it leaves unchallenged the notion that those who do or might use currently illicit substances should be disqualified from the policy debate. "Drug users, even occasional marijuana smokers, have a personal bias built into their analysis of drug policy," writes former prosecutor Robert Peterson in *Searching for Alternatives*. "Although policy analysis is alluded to, rational review is not likely to have an impact over the strong emotional and chemical attachments that bind users to psychoactive drugs."

The idea that arguments and evidence cannot be evaluated on their merits, without reference to the motives of those who present them, is especially pernicious in the drug-policy debate. The people whom Peterson proposes to exclude are reluctant to come forward because of the social stigma and legal sanction attached to the use of illicit drugs. But their experiences provide some of the most compelling evidence that legalization would not lead to an explosion of drug abuse and addiction. Until the great, silent majority of illicit drug users speaks up, most people will continue to view them as alien and antisocial.

The distinction between use and abuse is crucial to the argument for legalization. It's pretty clear that use of the currently illicit drugs would rise significantly if they were more readily available at lower prices. But, as Boston University economist Jeffrey A. Miron notes in *Searching for Alternatives*, "increases in consumption are not a cost per se; in fact, increases in consumption are a benefit. There is only a cost associated with increases in consumption to the extent that consumption of drugs produces significant externalities"—that is, costs imposed on others.

Furthermore, a sizable increase in drug use following a decrease in price means that people are shifting their money

from other expenditures. The question of whether a rise in use of certain drugs will mean a net increase in harm to third parties—through drug-related accidents or fetal damage, for example—depends on what people were spending their money on before the price change. "If, for instance, illegal drugs and alcohol are substitutes," notes Stanford economist Victor Fuchs, "the implications for public policy are different than if the substitution is between illegal drugs and bran muffins."

Meese would say such comparisons are meaningless, because of the inherent differences between legal and illegal drugs. Both Richard Lawrence Miller, in *The Case for Legalizing Drugs*, and Chester Nelson Mitchell, in *The Drug Solution*, show that these differences are figments of Meese's imagination. Addressing a point that is too often ignored by advocates of legalization, Mitchell also attacks the medical monopoly on prescription drugs. He may go a bit overboard in stressing the essential similarity of all psychoactive substances—he's a little too hard on aspirin, for example—but his general point is well taken: The distinctions enshrined in the drug laws do not correspond to pharmacological reality.

Consider MDMA, a.k.a. "Ecstacy." In *The Drug Legalization Debate*, Marsha Rosenbaum and Rick Doblin describe how the Drug Enforcement Administration decided to ban MDMA in 1985 after it became clear that some people were having fun using it, despite testimony about the psychotherapeutic uses of the drug, which promotes empathy, communication, self-insight, and recovery of repressed memories. Although there was little evidence of negative reactions to MDMA, the recreational reputation of the drug, together with its unfortunate (and inapt) nickname, doomed it to Schedule I classification, reserved for dangerous drugs with a high potential for abuse and no accepted medical value.

The sheer irrationality of the classification scheme supervised by the DEA is nowhere more apparent than in the agency's classification of marijuana as a Schedule I drug. *Drug Prohibition and the Conscience of Nations* reprints excerpts from testimony on the medical uses of marijuana—among them, the treatment of glaucoma, muscle spasms, and the nausea and vomiting associated with AIDS and cancer therapies. There are moving affidavits from parents, including Harvard psychiatrist Lester Grinspoon, whose children used marijuana to alleviate the side effects of chemotherapy. Polls find that a majority of the general public sympathizes with such patients and supports the medical use of marijuana. A recent survey indicates that most oncologists think it should be legal to prescribe the drug.

In 1988 the DEA's chief administrative law judge, Francis Young, recommended the rescheduling of marijuana, which he called "one of the safest therapeutically active substances known to man." (Indeed, marijuana's relative safety and versatility probably count *against* the drug in the DEA's view, since these qualities have made it the most popular illegal drug.) Young said the DEA classification of marijuana was "unreasonable, arbitrary, and capricious." In a statement that is remarkable for its callousness, then-DEA Administrator John Lawn rejected Young's finding. He accused the National Organization for the Reform of Marijuana Laws and the Alliance for Cannabis Therapeutics of perpetrating "a dangerous and cruel hoax on the American public." No wonder Lawn was angry—that's the DEA's job.

Not all supporters of prohibition are as irrational and dishonest as the DEA. In *Searching for Alternatives*, for example, Harvard public-policy lecturer Mark Kleiman seems to acknowledge that most people use drugs responsibly most of the time. Furthermore, "we should not assume that molecules come into the world legal or illegal." Still, he says, a sizable minority of people will abuse any psychoactive drug, hurting themselves and others in the process. By making more drugs more readily available at lower prices, legalization is likely to increase drug abuse and the costs associated with it.

Kleiman argues that we cannot rely on tort law, the criminal-justice system, and family courts to control drug-related behavior that violates people's rights, because "those systems are very costly, very inefficient, and have limited capacity." In any case, Kleiman is also concerned about self-harm, partly because some drug abusers will become a drain on the welfare system, but also because "drugs fool individual decision-making mechanisms" so that people are no longer "good stewards of their own welfare."

This is probably the strongest case that can be made for prohibition. It will not convince libertarians, especially since Kleiman starts with the generous premise that "the only proper role of government is to help individuals achieve their own welfare as they perceive it." But it appeals to the utilitarian instincts that most people bring to the drug-policy debate. So it's important to consider how each element of Kleiman's argument can be challenged.

First, in light of substitution effects, legalization need not increase drug-related externalities. Second, Kleiman merely asserts that the courts are incapable of handling the problem. Is this true? Are there ways of making the courts more efficient? It seems unlikely that a legal system that cannot deal with the minority of drug users who violate other people's rights would have more success controlling *all* drug users. Third, even if we assume that government welfare programs must exist, Kleiman would have to explain why the possibility of demands on the public purse justifies state control of drug taking but not of other risky behavior, such as sky diving, mountain climbing, and eating fatty foods.

The final point, that people simply cannot be trusted to judge what is best for them when it comes to drugs, is tied to the

mystification of addiction—what U.S. District Judge Robert Sweet calls the "devil-drug concept." The pervasive belief in the overwhelming power of drugs is further reinforced by the disease metaphor. "Treatment specialists believe that addiction is not a respecter of race, religion, or social status and that anyone can fall prey to this disease and the resultant degradations," writes Peterson, who compares taking drugs to playing Russian roulette. It's not just the drug warriors who talk about addiction as a disease. In *Drug Prohibition and the Conscience of Nations*, Baltimore Mayor Kurt Schmoke, who helped launch the latest round of legalization debate, calls for the "medicalization" of drug policy, based on the recognition that "drug abuse is a disease."

The problem is, it's not. Psychologist Stanton Peele, who has studied addiction for decades, has long argued that the medical model is inappropriate. In *The Truth About Addiction and Recovery*, he and co-authors Archie Brodsky and Mary Arnold extend this thesis, marshaling evidence to show that addiction is not a disease in any meaningful sense. Rather, "an addiction is a habitual response and a source of gratification or security....When a person becomes addicted, it is not to a chemical but to an experience. Anything that a person finds sufficiently consuming and that seems to remedy deficiencies in the person's life can serve as an addiction. The addictive potential of a substance or other involvement lies primarily in the meaning it has for a person."

The authors demolish the notion, paraphrased by Peterson, that addiction is "an equal-opportunity destroyer." The research on addiction makes it clear that "if you have better things to do and value other things more than escape into intoxication, then you won't make intoxication the center of your life." Addiction is most likely in "situations in which people are deprived of family and the usual community supports; where they are denied rewarding or constructive activities; where they are afraid, uncomfortable, and under stress; and *where they are out of control of their lives*."

Peele et al. argue that viewing addiction as an incurable disease is not merely wrong, it's harmful—especially to addicts. It reinforces the notion that addicts are helpless and will always be incapable of responsible drug use, while the truth is that most drug abusers cut back or stop on their own. The disease theory rules out the possibility of change without expert medical treatment.

While it promises a more humane approach to drug abuse, medicalization would simply transfer control from the police to the drug-treatment establishment. It would enhance the coercive powers of doctors and "treatment specialists," giving them the authority to determine who should receive drugs, who is addicted, and who needs help (whether they want it or not). A disturbing article in *Drug Prohibition and the Conscience of Nations*, describing how the "treatment" organization Straight Inc. handles young drug users, offers a preview of what such a world might be like. Medicalization might offer a kinder, gentler form of oppression, but it would still be oppression.

Critics of prohibition need to guard against the temptation to merely tinker with the drug laws. The thrust of the Hoover conference was that we have to find some "middle ground" between the status quo and legalization. Over the short term, the portrayal of legalizers as extremists may actually help, since it makes supporters of the drug war also look like extremists. And it's certainly true, as Kevin Zeese argues, that "harm reduction" can achieve marginal improvements—for example, by making hypodermic needles available without prescription, reducing the penalties for marijuana possession, and approving medical use of illegal drugs. But making things a little better should not be the ultimate aim.

Unfortunately, many reformers share the conceit of the drug warriors—that they know the "true" costs and benefits of drug use. They seem to believe that the "right" distribution of consumption among drugs can be scientifically determined and bureaucratically arranged through taxation, regulation, and rationing. An extreme example of this approach can be found in *The Drug Legalization Debate*, where journalist Richard B. Karel lays out a detailed plan for restricting the type, dosage, form, route, and frequency of drug consumption through devices such as electronic ration cards and officially approved coca chewing gum.

Even after suggesting that people have a right to control what goes into their bodies, most reformers fall into the tinkering trap. In *The Drug Solution*, Mitchell does a good job of explaining why it's unjust to punish all users of illegal drugs for the crimes of a minority. Then he ends up recommending an ideal balance of taxes and regulations that would take into account the costs and benefits of each drug. He says the taxes are necessary to cover externalities. But this is the same injustice he has condemned in connection with the war on drugs. If it's wrong to imprison a person for someone else's misbehavior, it's wrong to fine (or tax) him as well.

To urge consistency in such matters is not to say that libertarians cannot or should not make common cause with other critics of prohibition. But in doing so, we should not forget our principles. James Ostrowski, president of Citizens Against Prohibition, struck many at the Hoover conference as strident, but what he said went to the heart of the debate: "If we lack the moral and intellectual abilities to run our own lives, how can we possess the seemingly greater intellectual and moral abilities needed to run other people's lives? That is the great dilemma facing all paternalistic political theories." ◻

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MONEY ON THE MOVE

By Norman Macrae

Decent liberals should rejoice as prosperity moves toward the huddled masses of China, India, and the poor southern half of the world. In large degree this is about to happen. But the decent liberal who wrote *The Work of Nations* is very cross about it. Robert B. Reich puts a lot of blame on what he calls "laissez-faire cosmopolitans," which appears to be his newspeak for

The Work of Nations, by Robert B. Reich, New York: Knopf, 331 pages, $24.00
Quicksilver Capital, by Richard B. McKenzie and Dwight R. Lee, New York: Free Press, 315 pages, $24.95

decent, international, free-trading liberals. Reich is on the faculty of (you've guessed it) Harvard's John F. Kennedy School of Government, and he has discovered a change that happened 30 years ago.

The essence of the change is that employers can move jobs—especially manufacturing jobs—wherever they can be performed most efficiently and cheaply. Once a developing country adopts the one essential policy—namely, keeping politicians out of business people's way—a virtuous circle can develop at extraordinary pace.

As a British journalist, I was struck by this on my first visit to Japan in 1962. At that time—crazy as this now sounds—Japan had less than half the gross domestic product per head of Great Britain and was importing machinery from it. On about my third day in Japan I met a British engineer who had accompanied some machinery from Tees-side (in smoky northeast England) to Osaka. He wore red suspenders and a worried frown. He said young Japanese workers were swarming all over his machines and getting three times more output from them than did the trade-unionized British workers back home in Tees-side. Those young Japanese workers received about a third the pay of Tees-side workers.

Our reactions to these facts were rather different. Red Suspenders thought that Britain should ban the export of modern machinery to Japan forthwith. He belonged to what might be called the Dick Gephardt school of political economy. I, by contrast, wrote a book saying that since anybody putting new machines in front of workers in Osaka temporarily got nine times more per dollar spent than if he put those machines in front of workers in Tees-side, one fairly clear conclusion followed: People in the 25 years from 1962 to 1987 were likely to build up manufacturing industry considerably faster in Osaka than in Tees-side, reversing previous relationships.

This simple arithmetic caused grave offense in Europe and America, but, since approximately what I had said happened, I temporarily became rather popular in Japan. I am no longer popular there, because I think mainland Asia is now going to undercut Japan. By the late 1980s Japanese-managed factories in Thailand were reporting productivity—and, more important, quality checks—equal to those of Japanese-managed factories back in Osaka. Thais get perhaps one-fifth of Osaka's wages. Thailand, in turn, will soon be undercut by vast India and vaster China. Much of manufacturing will move there.

U.S. firms such as The Limited have been good at recognizing this. Each evening The Limited gathers from its shops the computer printout of the clothes sold that day. That computer printout becomes the cutting order for its workshops in Asia the next day. Four days later, a Boeing leaves Hong Kong, carrying the replenishment for The Limited's inventories just in time. This will be the pattern of tomorrow's manufacturing.

Reich understands this internationalization and maybe even exaggerates it. In the coming century, he says, there will "be no national corporations, no national industries. There will no longer be national economies, at least as we have come to understand that concept." Peculiarly, he then uses his book to advocate a soak-the-rich policy for what he instinctively assumes can remain America's isolated national economy. He is decently concerned that, by his arithmetic, the average real income of the poorest fifth of Americans dropped by about 5 percent in 1977-90, while the richest fifth became about 9 percent wealthier. He says this is because Americans go into three sorts of jobs, of which two are in trouble. One troubled group is the "routine production" workers: for example, the semiskilled factory worker who in the 1950s in big U.S. corporations seemed to be entering the happy middle class. That chap's trade-unionized job disappeared to Taiwan yesterday and will go to India tomorrow.

This is why politicians with a protectionist bent call for industrial policies to subsidize "research and development" in the most efficient parts of American and European manufacturing industry. The best section of Reich's book—which needs to be read by social democrats everywhere—explains why this doesn't work. If an efficient American "manufacturing" company researches into and designs a new electronic product or forklift truck, it efficiently transfers routine production of it to 40 cheaper-labor countries forthwith—especially countries where employers don't have to pay the insurance for their employees' expensive American health care.

When an American buys a "domestic" Pontiac Le Mans for $20,000, about $6,000 of it goes to South Korea for routine labor operations, $3,500 to Japan for advanced components, nearly $3,000 to advertising agents or data processors from Britain to Barbados. Less than $8,000 of the original $20,000 goes to Americans, and not much of that to horny-handed toilers: Mainly it goes to "strategists in Detroit, lawyers and bankers in New York, lobbyists in Washington, insurance and health-care workers all over the country, and General Motors shareholders—most of whom live in the United States, but an increasing number of whom are foreign nationals."

The only unskilled jobs now expanding for Americans are therefore what Reich calls "in-person service jobs." During the 1980s more than 3 million of these were created in fast-food outlets, bars, and restaurants alone. This was more than the total routine production jobs still left in the combined American automobile, steel, and textile industries. Junk-food hamburger joints pay junk wages. Reich considers means whereby a liberal administration might raise them. Most are fearfully illiberal, such as persecuting illegal immigrants.

The third sort of jobs into which Americans go are what I call "brainworkers' jobs" but Reich calls "symbolic-analytic services" because he wants to be rude about them. He is right that the trebling of lawyers has not brought the United States

better justice. I would say that rich countries have also not gained by the proliferation of professors in the social "sciences." But Reich and I would agree that the people now adding the most value to U.S. corporations are brainworkers, whether entrepreneurs, scientists, designers, software experts, marketers, or consultants. Reich's complaint is that only the most-fortunate and most-insightful Americans "are prospering as a huge, integrated world market rewards them handsomely," while the least-skilled Americans "are growing poorer, losing out to similarly unskilled workers worldwide."

Reich's unfashionable solution is that the United States should lay much heavier "progressive" taxation on its rich brainworkers and spend the money on providing government-decided goodies for poorer Americans: in particular, forcing on them educational services provided by well-paid people like himself. There are two problems with this suggestion. One is that educating uninterested people into being brainworkers has not been an American forte. The reason is that American education is a state-provided service that throws money at its bureaucracy rather than competition at its consumers.

The other problem is that a policy of higher taxes would create a brain drain. It would transfer most corporate headquarters abroad. It would send lots of what Reich calls the prosperous-job-providing "symbolic-analytic services" into foreign climes and deprive the United States of many of its fun people.

Brainworkers operate in information or in ideas, which are weightless commodities. They can be tapped at computer stroke across the world, from very pleasant places. That is why the new age of telecommunicating mobility means that democracies no longer have the option of saying that they will impose higher taxes on the better off for ever-higher government expenditure. The people to be taxed will show their mobility. "In the future, we will vote more frequently with our feet. If politicians try to boss us, brainworkers will go away and telecommunicate from Tahiti. Countries that choose to have too high a level of government expenditure or too fussy regulations will be residually inhabited mainly by dummies."

I have been incestuous with that last quote, which opens *Quicksilver Capital*. Richard B. McKenzie and Dwight R. Lee say it comes from a speech I made in 1988. I have been spouting prophecies like that for at least a dozen years. The joy of *Quicksilver Capital* is that it shows that I have dumbly been forecasting portentously what has actually long been happening. McKenzie and Lee may be rather too full of facts from lots of countries, but each of their tables delightfully confirms all my prejudices. The authors insist that it will be folly for governments "to spend more money on manpower training and public works to attract investment." They think that governments should reduce taxes, regulations, and trade barriers.

The new masters of *Quicksilver Capital*'s world are modern managers who "can, via satellites, send millions of bits of crucial information on design specifications, production costs, or schedules to virtually any point on the globe at almost the speed of light." They are bound to create more economic value than people sitting in one factory trying to make it more efficient. Government cannot control what quicksilver capitalists are doing, because it cannot know what the last keypunch said. McKenzie and Lee cite with approval studies that German and Japanese postwar miracles came largely because "their defeats included a breaking of the hammer locks imposed by (yesterday's) interests on their economies." The United States may now gain because its old vested interests, although still lubricated with promises from Washington, will increasingly learn that government promises can no longer usually be fulfilled.

The one dangerous exception might be control of foreign investment. The book cites Norman Glickman and Douglas Woodward's observation in *The New Competitors* that "an American can buy Chicken of the Sea tuna (owned by an Indonesian company) from A&P (British), or dresses from Bonwit Teller (Canadian) with a credit card from Marine Midland Bank (Hong Kong)." The silliest policy would be to try to block this incoming investment. The rich countries of tomorrow, and the ones with most of tomorrow's jobs, will be those that attract the investment of quicksilver capitalists from all over the world.

How to attract foreign investment? The evidence is overwhelming: Keep income taxes down—especially on the richer brainworkers and investors. Discriminatory tax policies drive these people out of the country. McKenzie and Lee parade figures from the 24 OECD countries to prove it.

The United States is well placed to recognize this, provided it does not listen to the likes of Reich. His own book provides grounds for optimism. He says, "Today, not more than 3 percent of the price of a semiconductor chip goes to the owners of raw materials and energy, 5 percent to those who own the equipment and facilities, and 6 percent to routine labor. More than 85 percent is for specialized design and engineering services and for patents and copyrights on past discoveries made in the course of providing such services." I simply do not believe that all of that 85 percent comes from expensively educated pure brainworkers. More will come from the streetwise.

In 1904 Germany's Mercedes motor-car company warned its stockholders that there could never be more than a million automobiles on the roads worldwide. The reason was that not more than 1 million artisans worldwide would ever be trainable as chauffeurs. Today Harvard's brightest, like Germany's most earnest of yesterday, gravely underestimate the capabilities of ordinary people. ■

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REVERSING DISCRIMINATION

By Steven Hayward

Amidst all the bright prospects that Alexis deTocqueville beheld in *Democracy in America,* he could see that race—especially the destiny of the black race—would prove to be the great stumbling block of American democracy. The racial question was "the most formidable evil threatening the future of the United States." Not only did Tocqueville doubt

Equality Transformed: A Quarter-Century of Affirmative Action, by Herman Belz, New Brunswick: Transaction Publishers, 320 pages, $32.95/$19.95
Civil Rights Under Reagan, by Robert Detlefsen, San Francisco: ICS Press, 237 pages, $24.95
Racial Preference and Racial Justice: The New Affirmative Action Controversy, edited by Russell Nieli,Washington, D.C.: Ethics and Public Policy Center, 532 pages, $25.95
Reflections of an Affirmative Action Baby, by Stephen L. Carter, New York: Basic Books, 286 pages, $23.00

that blacks and whites would ever live on a footing of equality anywhere in the world; he also thought "that the matter will be still harder in the United States than anywhere else." The law can be changed, but more difficult to change are the mores of the people.

The goal of a harmonious pluralism rooted in the American proposition about natural right—the "self-evident truth" that "all men are created equal"—is in a sense unnatural. It is an attribute of human social behavior that different kinds of people prefer their own. The preference for one's own, combined with the fear of others and the inherent competition for scarce economic resources, provides the natural basis for racial, ethnic, and religious rivalries. A regime dedicated to individual liberty will likely find incongruous the task of getting the races to mingle voluntarily, notwithstanding a central commitment to equal rights.

America, more than any other regime, takes seriously the idea of the law as teacher. The Civil Rights Act of 1964 can be viewed both as the culmination and the reinforcement of the deepening influence of the principle of equal rights. The act reflected the progress of America and was intended as the crucial stepping stone for further substantial progress in achieving America's goal of a colorblind society. Our brightest statesmen have held no illusions about how fast and how far this goal might be realized. Recall Lincoln, who spoke of the "deepening influence" the principle of equal rights would have on America over time, even though it would be "never perfectly attained."

Conservatives and libertarians disagree vigorously about whether the Civil Rights Act is consistent with the principles of limited government. (Can government rightly seek to regulate—or forbid—private discrimination?) But most believe, as Herman Belz argues in *Equality Transformed*, that the Civil Rights Act was consistent with the principles of individual natural rights and equality before the law. The well-known problem, which Belz painstakingly recounts, is that the judiciary has inverted the plain meaning of the Civil Rights Act and imposed race-conscious preferential policies.

Harvey Mansfield observes in his contribution to *Racial Preference and Racial Justice* that it may be possible to impose perfect justice, but that people may not be in a mood to live together when you are finished. Mansfield is merely echoing Tocqueville, who wrote that "some despot...might perhaps force the races to mingle." The judiciary has arguably become Tocqueville's despot, imposing policies that lack the political legitimacy of those that have been generated through the deliberation of the legislative process.

It is not so much that civil rights law has tried to push people too far, too fast, as it is that affirmative action has advanced in a clandestine and underhanded way toward a redistributive goal that a majority of Americans reject. Preferential treatment obviates the language in the Civil Rights Act expressly forbidding quotas and preferential treatment. (Justice Antonin Scalia remarks in one of his dissents that the Civil Rights Act is written with "a clarity which, had it not proven so unavailing, one might well recommend as a model of statutory draftsmanship.") This lack of political legitimacy has contributed mightily to making affirmative action the most explosive issue in American politics today, and has, if recent opinion polls are a reliable guide, actually undermined the moral authority of the civil rights movement.

The controversy over affirmative action has rendered the inherently difficult topic of race even more difficult. Stephen Carter, a professor of law at Yale, notes in his *Reflections of an Affirmative Action Baby* that not only is it hard to hold an honest conversation about affirmative action, it is even hard to hold an honest conversation about the reasons why it is hard to talk about affirmative action.

Because affirmative action lacks political legitimacy, its supporters have an interest in avoiding a straightforward debate about it. In part this must be because they know that preferential policies are inconsistent with the American principles of equality before the law, and that a vigorous debate would expose this contradiction. Hence the defense of affirmative action, as Carter observes, has "slipped its moorings," shifting from an argument about corrective justice and equality to an argument about "diversity." Affirmative action is necessary, the new argument runs, to provide representation for the "points of view" of excluded groups. This makes it easier to level the charge of racism, and all the other new "isms" of the moment, from the plausible sexism to the implausible "ageism." What? You oppose affirmative action? You must be a racist or sexist, for to oppose affirmative action is to oppose "diversity."

This development Carter views with great alarm, since its premise is that skin color determines, or should determine, what views a person of each given color and ethnicity should have. This view not only reinforces stereotypes; it requires stereotypes. Blacks who do not toe the "party line," as Shelby Steele has put it, are branded as "traitors" by civil-rights leaders, because their true diversity of views calls into question the premise behind the "diversity" brigade. (Steele, a professor of literature at San Jose State University, was among the first black liberals to dissent on affirmative action, in his 1990 book *The Content of Our Character*.)

Carter is taken aback, for instance, by NAACP Executive Director Benjamin Hooks's reference to Glenn Loury's views as "treasonous," and he devotes a great deal of time discussing Clarence Thomas and his nomination to the U.S. Court of

Appeals for the D.C. Circuit. (The book was published before Thomas was named to replace Supreme Court Justice Thurgood Marshall.) Carter notes that Thomas's "principal sin" was combining black skin with conservative views. For black groups to have opposed Thomas for the Court of Appeals, Carter argues, "would have been reverse discrimination with a vengeance."

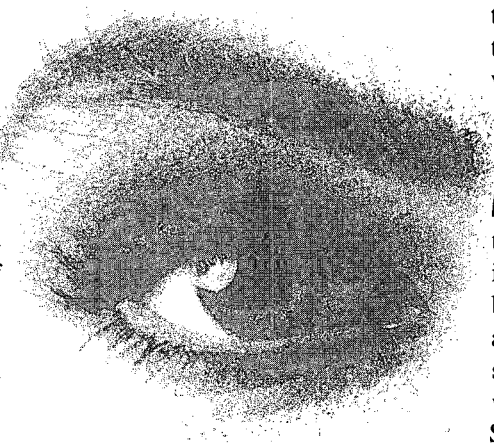
The self-censorship of the affirmative-action debate swings both ways, however. Opponents of affirmative action also tend to avoid straightforward discussion of the issue. There are several reasons for this. They are, of course, afraid of being called racist.

But more significant is that a basic trend of modern American politics—interest-group liberalism—offers easy encouragement to avoid dealing with the issue on a fundamental level. Modern American politics has practically ceased to debate any issue on the level of fundamental principle, preferring instead the comfortable give-and-take servicing of constituency-group demands.

Hence, even many conservative Republicans would rather strike some kind of deal on civil rights than engage in a candid debate that would reveal the deep and serious divisions within American society over the principles of equality of opportunity versus equality of result. (One of the virtues of Belz's book is its account of how the Nixon administration actively expanded the use of quotas and preferential treatment, hoping for political advantage among blacks, even as Nixon gave speeches condemning quotas.)

It is not a coincidence that supporters of affirmative action would turn to the diversity argument. It represents, in a profound sense, the *reductio ad absurdum* of interest-group liberalism. When government organizes itself to minister to discrete special-interest groups (farmers, retirees, defense contractors, exporters, and so forth), we should not be surprised when "discrete and insular minorities" (the designation repeatedly used by the judiciary starting with the *Carolene Products* case in 1938) step up to the table for their share of the pie. But interest-group liberalism is especially ill-suited to the politics of race, because it legitimizes exactly the kind of racial spoils system that the American principle of equal individual rights stands against.

To be sure, some political systems try to solve racial and ethnic problems by taking explicit account of race and ethnicity, dividing political power according to some proportional formula. But woe unto the nation—Lebanon and Yugoslavia today, India, perhaps, tomorrow—where this balance comes apart. Some cultures are open to the possibility of assimilation. The American experiment—the "melting pot"—rests on a higher principle. As with the principle of religious liberty (which is above and distinct from mere religious *toleration*), the American solution to the problem of race and ethnicity transcends mere assimilation by pointing to universal principles of individual rights which all men are bound to respect.



Many Republicans prefer to strike a deal on civil rights rather than engage in a debate that would reveal the divisions within American society.

Affirmative action and the diversity argument, then, represent a repudiation of the American principle of equality. And in the end that repudiation will be as harmful to minorities as to society as a whole. Belz concludes that "the struggle to define American equality will determine whether the United States will remain a free society." A debate of this kind must be joined at a fundamental level. Opponents of affirmative action will succeed in a positive reform—instead of merely exploiting racial resentment in the manner of Jesse Helms's notorious television commercial about a white losing a job on account of a minority quota—only by reclaiming the moral high ground on the basis of equal individual rights. A principled rhetoric of equality would not only put an end to preferential policies that treat equal people unequally but would also rescue civil rights from its present course of becoming an explicit racial spoils system.

The Reagan administration attempted with only mixed success to move in this direction, and this attempt is well narrated in Robert Detlefsen's *Civil Rights Under Reagan*. That attempt, of course, faced strong political opposition. But Detlefsen also describes how big business—a supposed bastion of Republican sentiment—vigorously resisted the administration's

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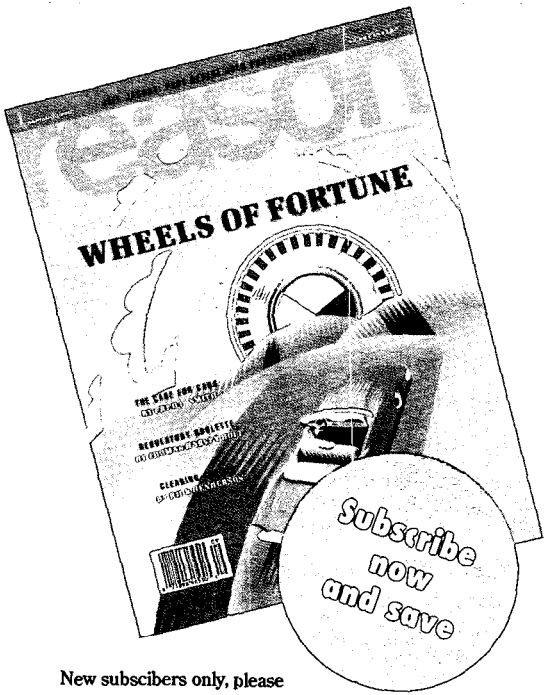

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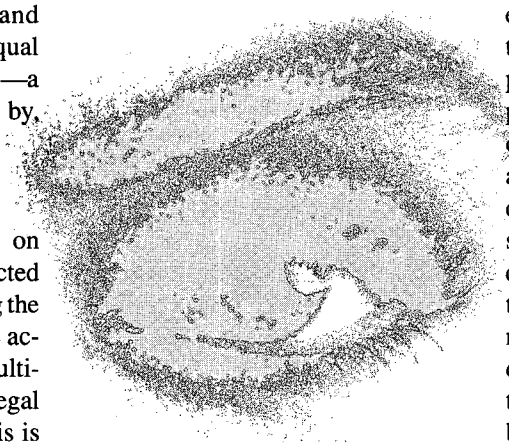
efforts to eliminate affirmative action.

Big business has learned to live with quotas, and feared, with justification, that the elimination of government-mandated quotas would expose employers to disparate-impact liability on the one hand, or reverse-discrimination liability on the other. But there is another, even lower rationale for this craven position: Affirmative action is anticompetitive. Smaller firms have more difficulty complying with federal affirmative-action requirements.

These difficulties aside, both Detlefsen and Belz make clear that a real deficiency of the Reagan administration's approach to civil rights was its failure to articulate clearly and forcefully the principle of equality and individual rights. The administration failed as well to articulate a positive vision of how a genuine regime of equal rights and economic liberties (the true basis of equal opportunity) would benefit minorities—a failure that was strongly criticized by, among others, Clarence Thomas.



A principled rhetoric of equality would put an end to preferential policies and rescue civil rights from becoming a racial spoils system.

Belz, Detlefsen, and the authors on both sides of the question collected by Nieli do a thorough job of exposing the political and legal morass affirmative action has become. The debate will ultimately be settled in the political and legal arena. But political and legal analysis is not fully sufficient for thinking about the issue. There is a social and cultural dimension that must be treated as well.

Carter's very thoughtful *Reflections of an Affirmative Action Baby* adds this much needed perspective. Carter opens this forthright and personal book by declaring that he got into law school because he is black. Although he supports affirmative action, he is clearly aware, from his own experience, that it attaches a stigma to its beneficiaries. As a policy matter, affirmative action targeted at would-be professionals in the black middle class benefits those least in need of help. Carter senses a shakeout is coming, with the end of affirmative action near—an end he would seem to welcome.

Otherwise, Carter sees the strong possibility that civil rights will lose the moral high ground as a result of the pernicious "diversity" gambit. The erosion of standards in the name of diversity will hurt all minorities in the end. He agrees with the critics who believe racism is an overused and often irresponsible term, analogous to the use of communism as a term of opprobrium in the 1950s.

In the end, Carter agrees with Shelby Steele that racism is a receding force in America, still present, but "no longer the all-encompassing force it once was, and it no longer holds the entire black race in desperate thrall." Carter knows he is likely to be labeled a "black conservative," a label he considers the ultimate stigma, indistinguishable from the lunatic fringe. He goes to great lengths to establish his liberal bona fides—he favors higher taxes and opposes the death penalty—but he senses that his protests will be to little avail.

At other points, his honest open-mindedness gets the best of him. He says perhaps we should try school choice, and he embraces the libertarian view that, at least in the professions, market forces will over time punish the willfully discriminating employer. Equally important, Carter takes seriously the views of black conservatives such as Thomas Sowell, Glenn Loury, and especially Clarence Thomas, and he devotes no small amount of effort offering advice to conservatives and Republicans on how to treat civil-rights issues more effectively. His most important point is that blacks hold their destiny in their own hands and must commit themselves to achieve any standard, thereby becoming "simply too good to ignore."

Carter stakes out a much needed moderate position between those who would exploit affirmative action politically by inflaming racial resentment and those in the civil-rights establishment who wish to maintain the political utility of racism by expanding its definition to justify huge new remedial claims. It may be, as Carter writes and Tocqueville thought, that "the minefield of racial politics is far too difficult to negotiate." But we have come a long way from Tocqueville's fear that the legacy of slavery could only issue in open racial warfare. Lincoln spoke of "the better angels of our nature." The issue of race relations and civil rights will require a full measure of "the better angels of our nature" if we are to continue on our way toward a colorblind society. ■

Contributing Editor Steven Hayward is director of the Claremont Institute's Golden State Center for Policy Studies in Sacramento.

ELIOT KNESSLER, F.D.A.

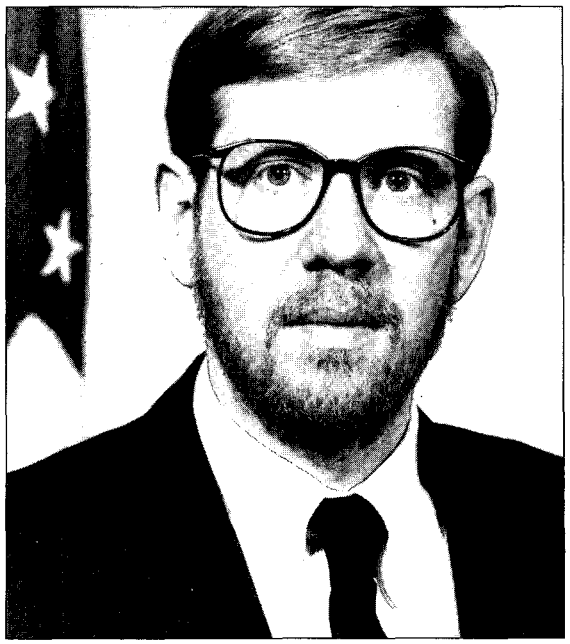
BY JOHN HOOD

It was a scene reminiscent of "The Untouchables." While David Kessler—the squeaky-clean new head of the U.S. Food and Drug Administration—rose to address a group of industry lawyers in Palm Beach, Florida, one April morning, his agents, halfway across the country, were moving in. "I am here today to tell you that I place a high priority on enforcing the law," Kessler reportedly told the skeptical lawyers.

But they weren't skeptical for long. Kessler informed them that, armed with a seizure action filed on the FDA's behalf by the U.S. Attorney's Office in Minneapolis, Kessler's inspectors were going after Cincinnati-based Proctor & Gamble, manufacturers of Citrus Hill Fresh Choice Orange Juice. The inspectors seized 2,000 cases of the juice, which is made from concentrate, while reporters looked on. Two days later, the company dropped the word *fresh* from the brand name, as did other offenders such as Ragu Foods, until then makers of Ragu "Fresh" Italian pasta sauces. Three weeks later, Kessler's FDA struck again—this time ordering manufacturers of vegetable cooking oils to remove the words *no cholesterol* from their labels.

Basking in lavish press praise and virtually unanimous approval from federal policy makers, Kessler is a hot commodity. In Washington, image is everything. Your public profile largely determines your power.

Kessler's good rep (Washington wags call him "Eliot Knessler") is no accident. When he came to the FDA last November, Kessler knew that his 200-pound-plus body wouldn't help his image as the federal government's primary food policeman. So the 5-foot-10-inch Kessler began dieting and jogging, and by his first big public splash—the orange juice case—he was a trim 155 pounds. A fawning profile of him by *People Weekly* led off with the story that Kessler's 40th-birthday present from his 6-year-old son, Benjamin, was a handmade poster of Kessler in a wrestling ring facing a large carton of orange juice labeled "fresh."



FDA chief David Kessler's crusades recall the paternalistic policies of the '60s and '70s.

In fairness, Kessler's goal doesn't appear to be self-aggrandizement. He simply understood that a high-profile campaign against a large company would help to inspire his staff and upgrade his agency's standing in the more-boring-than-usual Washington political landscape. It worked.

But the truth behind the FDA's new activism is hardly as good-vs.-evil as Kessler's rhetoric or the Eliot Ness analogies would suggest. The vegetable oils labeled "no cholesterol" had, well, no cholesterol. The FDA says the claim is still misleading because consumers might mistakenly get the impression that "no cholesterol" means "no fat" or "no risk of heart disease."

Even the Citrus Hill orange juice case isn't so straightforward. What does the word *fresh* actually mean? Maybe it doesn't apply to concentrate, but in the strictest sense nothing in a grocery store is fresh. Besides, the words *from concentrate* also appeared on the label.

At its heart, the FDA's new crusades aren't intended merely to ferret out fraud or to give consumers more-accurate information about the foods or drugs they buy. Instead, they are designed to give consumers *less* information, by limiting what manufacturers can say in labels or advertising. This is OK, though, because the FDA will decide what is safe, healthy, or effective on behalf of consumers. Or, at least, that's what the FDA wants you to believe.

Kessler's FDA isn't just going after food labeling. On a host of issues, ranging from prescription-drug ads to health-food regulation, the FDA is taking an activist, proregulation stance. The usual suspects are crowing about the end of Reagan-era deregulation (though the loved ones of AIDS patients and others who fell victim to the FDA's slow drug-approval process in the 1980s would challenge the existence of "deregulation"). In many cases, the new crusades are direct throwbacks to FDA policies of the 1960s and '70s that emphasized the inability of consumers to judge health and safety claims. Some of the most prominent issues include:

Vitamin and Food Regulation. Tryptophan is an amino acid used as a nutrient supplement by many Americans—until taken off the market by the FDA when a batch of tryptophan killed 31 Americans and made many more ill. After an investigation, the U.S. Centers for Disease Control concluded that the deaths were caused by a contaminant in a single batch of tryptophan manufactured by one company—Showa Denko—and not by tryptophan itself. But, as yet, the FDA hasn't allowed the product back on the market.

In fact, say tryptophan supporters Durk Pearson and Sandy Shaw, authors of *Life Extension*, the FDA is cracking down on other amino acids and foods sold as nutritional supplements. According to the FDA's definition, any food product sold with specific health claims—i.e., *x* will reduce your risk of heart attack, or cancer, or chronic insomnia—will hereafter be regulated as a drug.

That may sound like meaningless bureaucratese, but whether a product is considered a food or a drug makes a big difference. "If it's considered a drug, then it is almost impossible to market it," says Jack Calfee, a professor of marketing at Boston University and former Federal Trade Commission official. A manufacturer of a "drug" must conduct clinical trials costing up to $100 million per drug, produce detailed labels for the package including dosages, and survive a lengthy and expensive regulatory process. "Any nutrient is a drug under [the FDA's] definition," says Shaw, so even truthful claims about a common food product will take manufacturers into a dangerous area.

Prescription Drugs. Kessler has indicated that he will more stringently police direct-to-consumer advertising for prescription drugs, such as those for Nicorette (quit-smoking) gum and Minoxidil (the antibaldness treatment). Paul Rubin, former chief economist for the Consumer Product Safety Commission and a professor at Emory University, points out that these ads have an important health benefit—letting consumers know about new or promising treatments or even informing them about symptoms of disease they might otherwise not recognize—without *any* health risk. Doctors must still prescribe these drugs, after all, and they can't do so unless their patients come in to complain of symptoms or ask about new treatments.

The FDA is also cracking down on video news releases prepared by drug manufacturers. In a July letter to U.S. pharmaceutical companies, the FDA demanded to screen any video news releases prior to their use. Kathy S. Bartlett, a spokesperson for Burroughs Wellcome Inc. in North Carolina's Research Triangle Park, questions the need to single

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out video releases when print releases go unscreened. Television stations, she says, can use editorial judgment just as newspapers do.

Food Labeling. The "no cholesterol" vegetable-oil case shows how the FDA is resurrecting a form of the intensive regulation that prevailed in the 1960s. After the American Heart Association originally announced in 1957 that people who consume less cholesterol and saturated fat had less heart disease, manufacturers tried to advertise their products as low in these substances. But the FDA nixed the idea, using the familiar argument that if manufacturers made such claims their foods would be reclassified as drugs and regulated accordingly. Only after more than a decade of battles over whether product labels could use the word *cholesterol* or even tell consumers to "ask their doctor" about the potential health benefits did the FDA relent.

In its latest crackdown, critics note, the FDA is harming consumers' health. A low-cholesterol diet that still includes some fats is better than a high-cholesterol diet. In general, publicizing medical findings about foods is much more effective on product labels and in ad campaigns than in scientific journals and press releases.

Claims on labels can lead to actual consumer interest in relatively healthy foods. In 1984, Kellogg's began advertising that the high fiber content of its All-Bran cereal could lessen consumers' risk of cancer. The FDA, presumably in a fit of Reaganite salutary neglect, didn't stop the campaign, which All-Bran's cereal competitors soon mimicked.

A 1989 study by the Federal Trade Commission found that cereals launched after 1984 were higher in fiber and lower in fat and salt than before. The All-Bran case demonstrated that, in cereals as in other foods, competition will occur either on the basis of health claims or on the basis of taste.

By limiting what manufacturers can tout about the product, regulators actually reduce the likelihood that there will be something—such as health benefits—*to* tout. If companies can't promote high-bran cereals because they're good for you, they will sell cereals that taste good, sugar-coated though they may be.

Even with these and other regulatory campaigns underway, Kessler's FDA isn't satisfied. Rep. Henry Waxman (D-Calif.), a big Kessler booster, and Rep. John Dingell (D-Mich.) have introduced a bill to expand vastly the FDA's powers to investigate, inspect, and embargo foods, drugs, cosmetics, and medical devices. Among other things, the bill would allow the FDA to eavesdrop or spy on companies without a warrant and to seize documents, such as personnel records or trade secrets.

The FDA's new crusades aren't intended merely to ferret out fraud or to give consumers more-accurate information. Instead, they give consumers *less* information, by limiting what manufacturers can say.

Congressional Democrats are important allies in Kessler's campaign to police America's foods and drugs. So are interest groups such as the Public Citizen Health Research Group, a Ralph Nader–created organization headed by Sidney Wolfe which used to sue the FDA regularly. Now Wolfe meets once a month with Kessler for lengthy private discussions; "the protocol of their sessions," states *The Lancet*, a British medical journal, with all the reverence due a superpower summit, "provides for alternating the meeting sites between their offices."

But food and drug manufacturers are partly to blame for the FDA's new dynamism. During the 1980s, circumspect FDA regulation prompted a number of state attorneys general to go after labeling and marketing practices themselves, sometimes alone and sometimes in concert. Companies asked for comprehensive federal standards to replace this hodgepodge of state laws and rulings. So at first, even the regulated industry welcomed an activist FDA.

Unfortunately, firms have found that federal regulation by the FDA is in practice no less capricious and arbitrary than state regulation was. In a May article on FDA regulation in *Advertising Age* (whose own editorials welcomed the FDA back into the regulation business), Ken Feather, head of the FDA's Drug Advertising Surveillance Branch, said: "We used to say that if a company made certain changes, then we would probably not take any action. Now, we won't. Now, even if they make the changes, they might end up in court. We want to say to these companies that you don't know when or how we'll strike. We want to eliminate predictability."

Uncharacteristically for a government agency, the FDA may very well have accomplished its goal quickly and easily. No one inside or outside the food and drug industry can figure out what exactly will pass muster. The FDA "seems to be going by instinct," Calfee says. Their main argument—that truthful claims can still be misleading by not telling consumers every relevant fact—sounds reasonable, but there is neither enough space available nor sufficient advertising dollars to let companies inform consumers about every possible effect of every ingredient.

Given these limitations, advertising can still point consumers toward relatively healthy foods or persuade them to ask doctors about new prescription drugs. But apparently Kessler's FDA wants consumers to receive either perfect information or none at all. This goal may coincide with the crusading image Kessler projects, but it really isn't in the best interests of consumers.

This doesn't seem to bother Kessler. "The FDA's enforcement activities have been making headlines," he recently told a congressional committee. "Our record is excellent."

Contributing Editor John Hood is editor of Carolina Journal *in Raleigh, North Carolina, and a columnist for* Spectator *(N.C.) magazine.*

THE NEW COUNTRY

BY CHARLES OLIVER

Country singer Holly Dunn probably thought that the song "Maybe I Mean Yes" would be another in her growing list of Top 10 singles. The tune had a catchy melody and cute lyrics about a woman who can't decide whether she wants to go out with a man. But some people thought the song was an invitation to date rape.

As soon as radio stations started playing the song last July, they started getting complaints. Female listeners objected to these lyrics:

When I say "no" I mean "maybe"

Baby, you don't know me yet

Nothing's worth having if it ain't hard to get

So let me clarify so you won't have to try and guess

When I say "no" I mean "maybe"

Or maybe I mean "yes."

While feminists have complained about songs before (NOW wanted stations to pull Bruce Springsteen's "I'm on Fire" a few years ago because he called the object of his affection "little girl" in the song), the Dunn controversy was unusual. It wasn't a planned campaign by some organization but a spontaneous outpouring of phone calls by country-music fans.

"I've never seen such an immediate negative response before," said Tim Murphy, program director at Seattle's KMPS, in an article in the *Los Angeles Times*.

Dunn at first argued that the song had been misinterpreted. Eventually, she asked radio stations to pull the song in order to avoid offending people. "I think this song is a victim of timing," she said. "A few years ago, a record like this wouldn't have raised an eyebrow."

Was Holly Dunn's record "Maybe I Mean Yes" a victim of bad timing?

PETER NASH

Dunn is right. The country-music audience has grown tremendously over just the last few years. As recently as the early 1970s, a country album was considered successful if it sold 70,000 copies. Today, Top 10 albums go platinum (1 million copies sold). Garth Brooks made country-music history in September when his third album became the first by a country artist to hit number one on *Billboard*'s pop chart. The album *debuted* in the top slot.

But the country-music audience is not only growing, it's changing. New listeners are forcing their tastes on the business, and Dunn got caught by the changes. A few years ago, listeners would have taken the song for what Dunn intended: "a cute lighthearted story about courtship and flirtation." Today's audience listens to the music with different preconceptions and concerns than the audience of, say, 1979.

"There's no question that big changes are occurring in the audience and the music," says Gene Bridges, program director at Los Angeles country-music station KLAC. "The audience is certainly bigger than it has ever been, but it's also broader—younger, more urban, probably even more liberal."

It's also more feminine. "It used to be that the audience at a typical concert would be 60 percent men, 40 percent women," says Bridges. "Now it's more even. Some of the really popular male singers may even draw 60 percent women."

What these new young listeners seem to most want to hear is a type of country music known in the industry as New Traditionalism. Fiddles, steel guitars, and twangs so thick they should drive anyone born north of the Ohio River from the room are suddenly hip. And after disappearing during the '70s, cowboy hats are once again ubiquitous among young male singers. Indeed, the biggest of the young stars—Clint Black, Ricky Van Shelton, Dwight Yoakum, and Garth Brooks—are collectively referred to as the "hat acts."

This is all ironic because for at least 30 years record companies have been pushing a syrupy middle-of-the-road sound scarcely different from the usual pop ballads. The crossover appeal of New Traditionalism seems to have caught them by surprise.

Dwight Yoakum, one of the purest of the New Traditionalists, has said many times that the "suits" in Nashville told him his first album was too country. They even forced him to change the title from *Guitars, Cadillacs, and Hillbilly Music* to *Guitars, Cadillacs, etc., etc.* because they didn't think people would buy something with *hillbilly* in the title. Then the record went gold and spawned several hit singles. The suits let Yoakum call his second album *Hillbilly Deluxe.*

The record companies didn't anticipate the impact that music videos would have on their business. "The Nashville Network has done a lot to expand country music's audience," says Cheryl Daily, a spokeswoman for the eight-year-old cable channel.

Indeed, younger artists consistently cite exposure on TNN as a boon to their careers. Available to 53 million cable households (almost as many as MTV),

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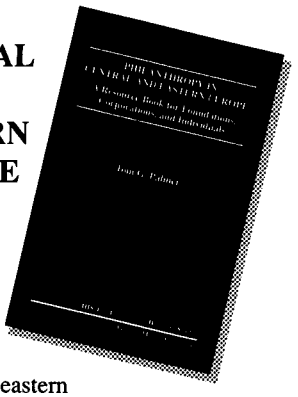

Central and eastern Europe have recently "opened up" to the rest of the world. The creation of new universities, think tanks, businesses, and organizations, and the revival of old ones, have generated requests for funding from foundations, businesses, and individuals in other parts of the world. How is a foundation or business corporation to distinguish between opportunities to spend its limited funds wisely and financial "black holes"? This short booklet was written with precisely such needs in mind and is now available for $6.95. Send check or money order to: Institute for Humane Studies, George Mason Univ., 4400 University Dr., Fairfax, VA 22030-4444, Attn: Andrea Jardine.

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Moving west from New York, rent control and exclusionary zoning are bringing a housing crunch to Los Angeles and the San Francisco Bay Area as well. Such local regulations are the real causes of America's housing shortage, William Tucker argues. In cities without rent control, landlords offer bonuses to entice renters. In rent-controlled cities, housing is in short supply and landlords and tenants are at each other's throats. The best way to increase the supply of affordable housing, Tucker finds, is to allow people to build it—without a morass of regulations that reduce supply and raise costs. ***Zoning, Rent Control, and Affordable Housing*** by William Tucker, 72 pp., $9.95

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TNN has brought country music out of the rural South and into virtually every city in the United States. With 18 hours of programming to fill each day, TNN has plenty of room for new artists.

Many of the younger artists who grew up with television know how to play to the camera. While Holly Dunn, Patty Loveless, the Judds, and Clint Black have undeniable musical talent, they are also good-looking people with a flair for making interesting music videos. Ricky Van Shelton has a strong voice, but he may be more famous for taking his shirt off in most of his videos. And Dwight Yoakum's impossibly tight jeans get mentioned in every profile written about the singer.

Of course, the greatest marketing tools in the world are of no use if there's no market for the product. Fortunately for country music, there was an audience just waiting for it. As baby boomers get older, they seem to yearn for simpler times. The most successful shows on cable are sitcoms from the '60s. Westerns are showing up on movie screens again. Nostalgia is hot, and country music is nothing if not nostalgic.

But if the sound of the music is traditional, the lyrics often aren't. Just as Kevin Costner used the form of a traditional Western to preach '90s values in *Dances with Wolves*, today's young songwriters use familiar three-chord songs to tell modern-day stories. Not surprisingly, young artists can't always leave behind their preconceptions and concerns, their '90s sensibilities. And even when they can, their audiences can't, as Holly Dunn found out.

The younger artists talk about more than the traditional country subjects—momma, prisons, trains, trucks, and getting drunk—and they often treat the old subjects in new ways. A few years ago, for example, John Anderson answered 70 years of drinking songs with "When You Get on the Whiskey (You Better Let Somebody Else Drive)."

The biggest change is the way the younger male artists treat women and romantic relationships. From the be-

ginning, male country singers have performed countless songs about the women who left them and did them wrong. Relationships never seemed to work out, and it was always the woman's fault. The titles said it all: "Your Cheatin' Heart," "She's Acting Single, I'm Drinking Doubles," and "Oh, Lonesome Me."

But last year, Garth Brooks and Clint Black—maybe the two most important singers to emerge in the last three years—turned the clichés on their head. In their debut albums, both men included wistful songs about romantic relationships that ended on friendly terms. Black's "A Better Man" is a song even Phil Donahue could love. While the singer is sad to see his love go, he's convinced it's for the best, and on the whole he will cherish the memories of the relationship: "Things I couldn't do before now I think I can/ And I'm leaving here a better man."

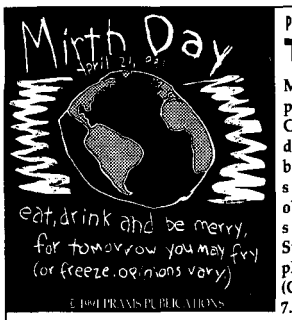
That isn't how country-music relationships are supposed to end. A man's supposed to get drunk when his woman leaves him, maybe even do something worse. The hero of Willie Nelson's mid-'70s *Redheaded Stranger* album is a preacher who hunts down and kills his wayward wife and her lover.

That sort of casual attitude toward violence against women probably wouldn't sit well with Brooks. One of the most controversial singles from his debut album was a song about a battered wife, "The Thunder Rolls." This time, the cheating, drinking husband is clearly a bad guy. When his wife dares to complain, he beats her. The video for the song depicts the husband's violence—and the wife's retaliation—so explicitly that some stations refused to run it.

Of course, previous generations of country-music singers didn't glorify wife beating, but they didn't condemn it either. They didn't talk about it at all; it just wasn't of their musical world.

Some longtime country fans complain that their music is being yuppified. In fact, it's just changing to keep up with the times. Garth Brooks may not be Hank Williams. But this isn't 1951.

Charles Oliver is assistant editor of REASON.



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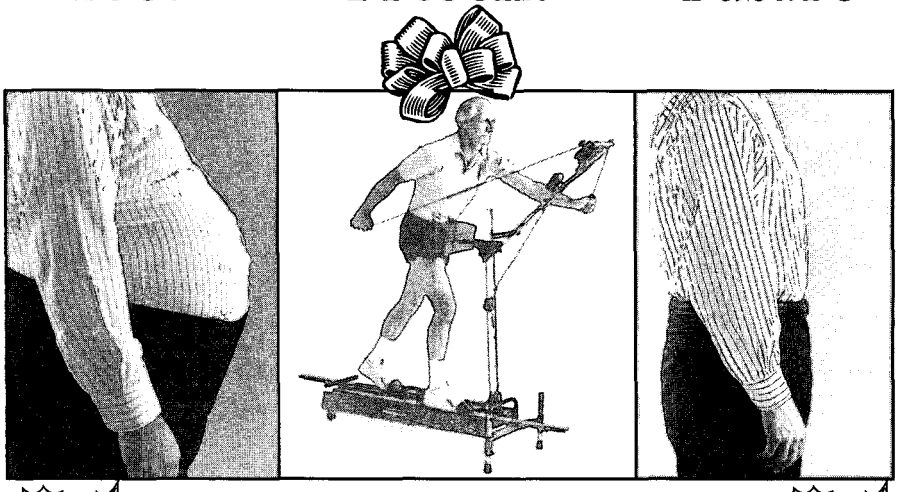

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THE UNWELCOME WAGON ROLLS ON

BY WILLIAM TUCKER

As a suburban reporter in the '70s, I witnessed dozens of zoning battles. Hostile crowds shouted down recycling centers, Montessori schools, low-income apartment complexes, upper-income apartment complexes—almost anything that anybody ever wanted to build, except for single-family homes just like the ones people were already living in. Then one day the owner of a property zoned for industry came in asking for a zone change that would allow him to build single-family homes. The whole neighborhood—living in identical single-family homes—objected. Realizing the owner had been unable to attract an industrial developer, the residents wanted the property to remain a vacant lot.

So it goes all over America. Housing researchers estimate that zoning delays and building-code requirements add some $15,000 to $30,000 to the price of a new home in many parts of the country. "Starter homes"—simple, no-frills structures that first-time home buyers can afford—are almost impossible to build in exclusive suburbs. Apartments are fought everywhere. Mobile homes (average owner income, $18,000) are restricted to industrial zones—when they are allowed at all. Then people wonder why we have an "affordable housing problem."

Into this thicket has sallied the Department of Housing and Urban Development. With the publication of *Not in My Back Yard—Removing Barriers to Affordable Housing*, HUD has put the federal government on record against this tyranny of the already-housed majority. The report, issued by the Advisory Commission on Regulatory Barriers to Affordable Housing, may not win many votes. But now that states and municipalities can no longer expect the federal government to build low-income housing, people are taking notice.

"The cost of housing is being driven up by an increasingly expensive and time-consuming permit-approval process, by exclusionary zoning, and by well-intentioned laws aimed at protecting the environment and other features of modern-day life," writes former New Jersey Gov. Thomas Kean, who chaired the commission. "The result is that fewer and fewer young families can afford to buy or rent the home they want."

Housing is one of the most regulated industries in the nation. This fact usually escapes notice because the regulation is done at the local and municipal levels, rather than at the federal level.

The commission points out what has been obvious for a long time. Housing is actually one of the most highly regulated industries in the nation. This fact usually escapes notice because the regulation is done at the local and municipal levels, rather than at the state or federal level.

In 1970, for example, housing prices in California were right at the national average, even though the state's population had increased almost 50 percent during the previous decade. After two decades of environmental protection, building moratoria, tightened zoning ordinances, no-growth referenda, and rent-control ordinances that now affect half the tenant population, California has housing prices that are twice the national average and leads the nation in homelessness.

Or look at what happened in Takoma Park, Maryland, a rent-controlled suburb of Washington that fancies itself the "Berkeley of the East." In the early '80s, some Takoma Park residents finally persuaded the City Council to crack down on "illegal" apartments that people had been renting in their homes since World War II. The battle lasted 10 years, but in 1988 the city government finally evicted over 600 low-income people from their apartments. The affordable-housing commission estimates that more than 10 million similar apartments around the country cannot be rented because of zoning laws.

To counter these kinds of policies, the commission offers several strategies: The federal government should encourage states and municipalities to remove local barriers to housing, partly by threatening to withhold federal housing assistance. Residential projects of under $250,000 should be exempted from the Davis-Bacon Act, which requires the payment of union wages in projects receiving federal funding. (The cutoff is now $2,000.) Federal programs for wetlands preservation and the protection of endangered species should be modified to take into account their impact on housing construction. "Housing impact statements" should be added to already lengthy environmental-impact statements.

All this sounds suspiciously like an addition to the supply of regulation and paperwork, rather than affordable housing. On other subjects, the report is even less forthcoming. *Not in My Back-*

yard says almost nothing about rent control, even though it's causing housing shortages in the major cities of the East and West coasts. (The 1990 census shows that cities with rent control have almost twice as many homeless people per capita as cities without rent control.) In general, the report has the flavor of one of those perennial Washington alerts that will be cited 10 years from now to show how little progress has been made.

Modular and manufactured housing, for example, have been a favorite of federal housing reports since HUD Secretary George Romney tried to launch "Operation Breakthrough" in 1968. The iron triangle of union regulations, municipal planning-board skepticism, and homeowners' unwillingness to countenance such "tacky" stuff in the neighborhood brought a quick end to that. Modular housing is now making some headway, but only because it has become so sophisticated that it is virtually indistinguishable from the "stick-built" variety.

But beyond all the talk about breakthrough technologies and "stimulating regulatory reform," *Not in My Backyard* fails to confront the most difficult problem of all: Zoning remains the bread and butter of homeowners, the most politically conscious element of most suburban communities. The people whose investments are being protected are also the ones who are writing the laws. They refuse to accept the reality that investments involve risk, that prices can go up or down.

The great irony of the zoning wars is that people who use the power of the government to protect their own investments honestly believe they are doing so in the name of "property rights." While guarding what they view as their own property rights, they refuse to acknowledge the property rights of others. And therein lies the secret to solving the affordable housing problem—although HUD never quite manages to put its finger on it. We are all going to have to be a little more tolerant of each other's presence.

Contributing Editor William Tucker is a staff writer at Forbes.

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Myths About Israel and the Middle East (1)

Do the media feed us fiction, instead of facts?

We all know that, by dint of constant repetition, white can be made to appear black, good can get transformed into evil, and myth may take the place of reality. Israel, with roughly one-thousandth of the world's population and with a similar fraction of the territory of this planet, seems to engage a totally disproportionate attention of the print and broadcast media. Unfortunately, much of what the media tell us – in reporting, editorializing, and in analysis – are endlessly repeated myths.

What are some of these myths?

■ **Myth:** The "Palestinians" are a nation and therefore deserving of a homeland.
Reality: The concept of Palestinian nationhood is a new one and had not been heard of until after the Six-Day War, when Israel, by its victory, came into the administration of the territories of Judea and Samaria (the "West Bank") and the Gaza strip. The so-called "Palestinians" are no more different from the Arabs in the neighboring countries of Lebanon, Syria and Jordan, than Wisconsinites are from Iowans.
■ **Myth:** Judea and Samaria (the "West Bank"), and the Gaza Strip are "occupied Arab territory".
Reality: All of "Palestine" – east and west of the Jordan River – was part of the League of Nations mandate. Under the Balfour Declaration all of it was to be the "national home for the Jewish people". In violation of this mandate, Great Britain severed the entire area east of the Jordan – about 75% of Palestine, and gave it to the Arabs, who created on it the kingdom of Transjordan. When Israel declared its independence in 1948, five Arab armies invaded the new country in order to destroy it at its very birth. They were defeated by the Israelis. The Transjordanians, however, remained in occupation of Judea and Samaria (the "West Bank") and East Jerusalem. They proceeded to drive all Jews from those territories and to systematically destroy all Jewish houses of worship and other institutions. The Transjordanians, now renamed "Jordanians" were the occupiers. Israel regained these territories following its victory in the Six-Day War and has administered them ever since. They have not been annexed. Their final status will be decided if and when the Arabs will ever sit down to talk peace with Israel.
■ **Myth:** Jewish settlements in Judea and Samaria (the "West Bank") are the "greatest obstacle to peace".
Reality: This is a totally new formulation, recently put forward by Secretary of State Baker. He and the president seem to be obsessed by it. Fewer than 100,000 Jews are settled in these territories, living among about 1.4 million Arabs. How can Jews living there be an obstacle to peace? Why *shouldn't* they live there? About 700,000 Arabs live in Israel proper. They are not an obstacle to peace and nobody, including the Israelis, consider them as such.
■ **Myth:** Israel is unwilling to yield "land for peace".
Reality: The concept that to the loser, rather than to the victor, belong the spoils is a radically new one, never before thought of in world history. Israel has emerged victorious in the five wars imposed on it by the Arabs. In order to make peace, it has returned over 90% of the territory occupied by it, specifically the vast Sinai Peninsula, to Egypt. That territory contained some of the most advanced military installations in the world, prosperous cities and settlements, and oil fields developed entirely by Israel that made it independent of petroleum imports. In the Camp David Accords (1983) Israel agreed to autonomy for Judea and Samaria (the "West Bank") with the permanent status to be determined after three years. No responsible Palestinian representation has been available to negotiate with Israel about this.

The greatest myth of all is that Israel's administration of the Gaza Strip and of Judea/Samaria is the root cause of the conflict between Arabs and Jews. But that is nonsense and flies in the face of historical reality. The Arab desire to obliterate the Jewish presence in Palestine, and since 1948 the Jewish state long predates that territorial administration. The root cause of the conflict is the total unwillingness of the Arabs to tolerate any "non-believers" to be in control of even one inch of what they consider "sacred Arab soil". And they don't just mean Judea/Samaria (the "West Bank") and the Gaza strip. They mean Tel Aviv, Jerusalem, the whole state of Israel. No change in the Arabs' attitude seems to be in the offing. But until there is such a change, no peace can possibly come to this troubled area.

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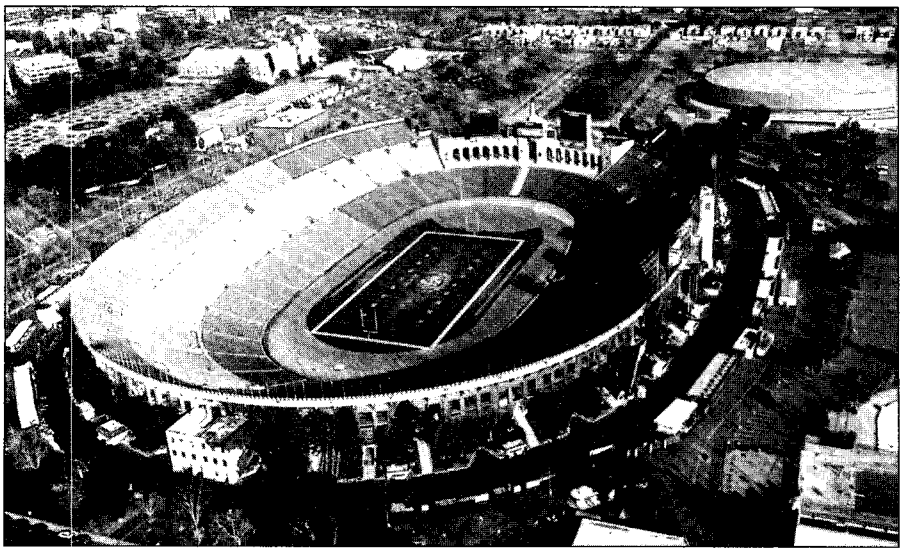
BY STEPHEN MOORE



Thanks to private enterprise, the roving Raiders will call the Los Angeles Memorial Coliseum home for years to come.

These days, professional sports franchises seem to be in perpetual motion. In the National Football League, after 70 years in Chicago, the Bears may abandon Soldier Field for the city's growing western suburbs, thus becoming the Schaumburg Bears. And though it seems like just yesterday that the Cardinals fled St. Louis for Phoenix, owner Bill Bidwell already threatens to move on. Indeed, seemingly every NFL team has moved or is looking to move.

Sports Illustrated columnist William Nack recently parodied this current relocation frenzy, noting that it might not be long before NFL teams "begin playing on aircraft carriers, with $25 parking on the hangar deck, soaring skyboxes port and starboard, and Taco Bells fore and aft. Home games would be scheduled from port to port up and down the West Coast." This floatable stadium might be called "Carrier Dome II," he quipped.

The relocation craze isn't confined to the NFL. In baseball, the Astros want out of Houston; the Indians hope to shed their half-century losing tradition by escaping Cleveland; and the Mariners may soon bid adieu to the cavernous Kingdome in Seattle. Waiting in the wings are the Greensboros, Orlandos, Sacramentos, and Tucsons—hungry for a sports team and eager to seduce club owners with lucrative financial packages.

All of the teams seem to want state-of-the-art stadiums with domes, skyboxes, plush locker rooms, built-in hotels and restaurants, increased seating capacity, multilevel parking facilities, and on and on. And, of course, they want these stadiums built at taxpayers' expense. Frantic city leaders wonder whether anything can convince club owners to keep the home team off the auction block, short of handing over the keys to the city vault. But last year, Los Angeles discovered a promising way to satisfy a team's demands without stiffing taxpayers: privatization. Thanks to a recent pioneering deal that will lead to the private financing, management, and operation of the soon-to-be renovated Los Angeles Memorial Coliseum, the NFL's Los Angeles Raiders will stay in that city for a long time.

The happy ending to this L.A. story is especially improbable considering that one of its principal characters is the consummate antihero of the professional sports world, Raiders owner Al Davis. "Just win, baby!" is Davis's well known team motto, and it aptly describes the way the man does business. As *Sports Illustrated*'s Peter King recently said of Davis, "No owner has ever operated with a more unseemly disregard for his constituents."

Davis kicked off the relocation craze in 1981, shortly after the Raiders won their second Super Bowl. The then-Oakland Raiders shocked the football establishment by snubbing their fans in the Bay area and heading for the 90,000-seat Coliseum and the lucrative Southern California television market. Along the way, Davis won a multimillion-dollar lawsuit from the other NFL owners and longtime adversary, then-NFL Commissioner Pete Rozelle, who had attempted to block the move.

This landmark court case gave team owners almost carte blanche to search out new accommodations. No surprise then that within five years of settling in Los Angeles, Davis announced in 1988 that the club would be repacking its equipment bags.

Davis had tired of the Coliseum. Almost 70 years old, the facility urgently needs renovation. The seats are set far back from the action, thanks in part to a track that circles the field. Attendance figures of around 50,000 a game have forced the Raiders to routinely play in front of waves of empty seats. The team's inability to sell out the Coliseum has also meant foregone TV revenue because of NFL blackout rules. Meanwhile, investment consortia from other cities began to dance multimillion-dollar contracts in front of Davis's eyes to pry the Raiders away from the Coliseum.

The late 1980s was a particularly bleak period for Raiders fans in Los Angeles. The team came within an eyelash of leaving on repeated occasions. Irwindale, California, (pop. 1,000) handed Davis a $10-million, nonrefundable check to move there; Davis

flirted with the idea but eventually pocketed the payment and looked elsewhere.

The next bid came from Sacramento, which held out $50 million and a $100-million new stadium as an inducement to the Raiders. Davis again balked.

Next, Oakland re-entered the sweepstakes, offering a $600-million, 15-year package for the Raiders to move back. Before Davis could grab the money and run, Oakland taxpayers pulled back the hefty offer. Later, Oakland officials put a revised contract on the table: $32 million in cash and $60 million in improvements to Oakland-Alameda Stadium. Davis proclaimed in the spring of 1990 that he was inclined to sail the Raiders back to Oakland.

The Raiders' negotiations with Los Angeles had stalled, and the team seemed certain to exit Southern California. In March 1990 Richard Riordan of the Los Angeles Coliseum Commission bid farewell to the team: "I'd like to congratulate Oakland on getting the Raiders, and I wish them the best of luck."

But before a deal with Oakland was formally struck, a new player entered the negotiations on behalf of Los Angeles in a last-ditch effort to break the logjam: Spectacor Management Group, a private sports management firm that has run the day-to-day operations of the Coliseum since 1988.

Based in Philadelphia, Spectacor is the world's largest sports-facility management firm, with 10,000 employees and sales of roughly $100 million. It owns the Philadelphia Spectrum and manages more than two dozen other facilities—including the Superdome in New Orleans, Three Rivers Stadium in Pittsburgh, and the soccer stadium in Torino, Italy.

In the first year of its contract to run the Coliseum, Spectacor nearly doubled the facility's net operating income. Moreover, it subsequently spent some $3 million on stadium improvements.

In the fall of 1990, Spectacor, Los Angeles, and the Raiders announced their eleventh-hour agreement to privatize the Coliseum and keep the Raiders in Los Angeles. Spectacor will finance a $150-

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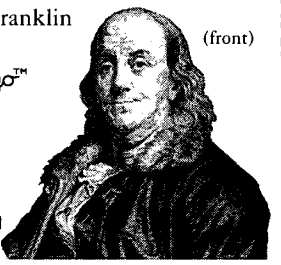

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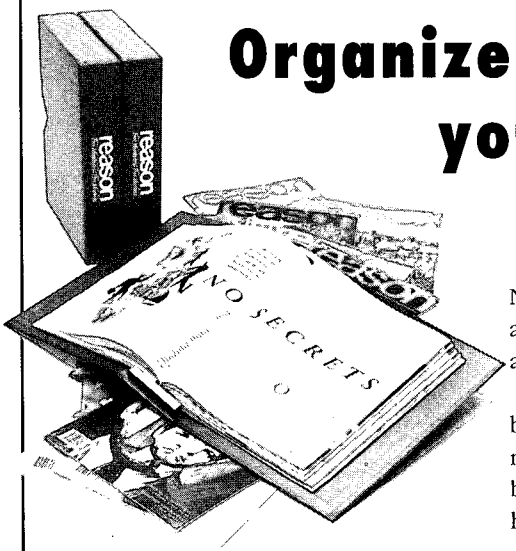

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million renovation of the Coliseum, satisfying Davis's demands for a modernized stadium with luxury boxes. The firm also promised to pay the Raiders $32 million in cash. The Raiders agreed to play their home games in the Coliseum for 20 years. And the Coliseum Commission agreed to lease the stadium to Spectacor for 20 years upon completion of the renovations. Spectacor plans to recoup its investment by booking events at the stadium.

"It was a happy occasion for all of the parties," wrote the *Long Beach Press-Telegram* when the agreement was announced. "For the Coliseum Commission, which feared it had lost the Raiders for good when the team announced plans to return to Oakland; for Spectacor, which can proceed with plans for reconstruction of the Coliseum; and for Davis, who can now put behind him all the distractions eight years of lawsuits and arguments have caused and get on with the business of football."

The biggest winners are the people of Los Angeles. The day the deal was struck, Mayor Tom Bradley said, "The jobs and economic activity that a professional football team generates are here to stay. The Raiders will continue to call the Los Angeles Coliseum home. This is a reason for all football fans and admirers of the Coliseum to celebrate."

Bradley's deputy Mark Favioni is more to the point: "Privatization gives us a state-of-the-art sports facility for the 21st century—at no cost to the taxpayer," he emphasizes. "Look around at other cities, such as Chicago and Baltimore, where historic stadiums are being torn down. We get a modernized stadium, while preserving the historic architecture."

One of the virtues of this deal is that, in modernizing the stadium, Spectacor has promised to preserve the original architectural design and the renowned outer facade of the Coliseum. In 1984 the federal government declared the coliseum a national landmark.

"I shudder when I think of what might have happened to the Coliseum if Spectacor hadn't come forward," says Matt Grossman, president of the Coliseum Commission, which voted 8-0 in favor of the privatization. "With the city incapable of making the financial commitment, privatization was really the only way to get this done," he says.

How is the deal working so far? Although the biggest question mark in the beginning was whether Spectacor could raise the capital to finance the renovations, the company has already raised most of the money. The city's architectural preservation commission still must approve the final modernization plan, but sources with Spectacor and the Coliseum Commission say the company will get the go-ahead within the next several months. Spectacor plans to begin renovation early next year and hopes to have the stadium ready for the 1993 or 1994 football season.

"Privatization gives us a state-of-the-art sports facility for the 21st century, at no cost to the taxpayer," says Mark Favioni, a deputy to L.A. Mayor Tom Bradley. Could this signal the end of the era of publicly financed sports stadiums?

With a modernized stadium around the corner, Los Angeles officials already plan to bring the Olympics back to Southern California within the next 20 years. They are trying to attract the 1994 World Cup soccer matches. Spectacor has also agreed to continue to book community events, such as graduations, and allow the Coliseum to be used when such international celebrities as the pope and Nelson Mandela pass through Los Angeles. In fact, the private managers have already quadrupled the number of community events held in the Coliseum since they took over operations and booking.

One thing is certain: None of this success story could have taken place without the private sector. Favioni dismisses the notion that the city could have accomplished this itself: "We never have had the financial capability or the political will. Quite simply, without privatization, the Raiders would have been gone."

The pioneering Los Angeles Memorial Coliseum privatization raises an issue of larger political significance: Could this signal the end of the era of publicly financed sports stadiums? Over the past decade alone, U.S cities spent an estimated $750 million to build or renovate arenas and stadiums to accommodate professional sports teams.

A recent study by the Heartland Institute, a free-market think tank in Chicago, suggests that these were dubious capital investments. The study found that the "massive capital costs of modern facilities make it very unlikely that modern stadiums will earn enough to cover debt service expenditures regularly enough to earn a profit." The 14 municipal stadiums examined had a net accumulated value of negative $140 million.

For financially strapped older cities—Chicago, New York, Philadelphia, Washington, Detroit, to name a few—this public subsidy for sports teams has become unaffordable. Happily, cities seem to be waking up to fiscal reality—rebuffing the demands of team owners. Chicago officials spent $150 million to build new Comiskey Park for the White Sox, but they have told the Bulls and Blackhawks to find private financing if they want a new arena. In Detroit, the city council has nixed the Tigers' request for a new, taxpayer-financed baseball park.

"You can bet we will see more of this stadium privatization in the future," predicts Peter Luuko, vice president of Spectacor and the man who negotiated the agreement with the Raiders. He may be right. Any deal that can convince the wayward Al Davis to stay put for a while is bound to be widely imitated.

Stephen Moore is director of fiscal policy studies at the Cato Institute.

ASLEEP AT THE SWITCH

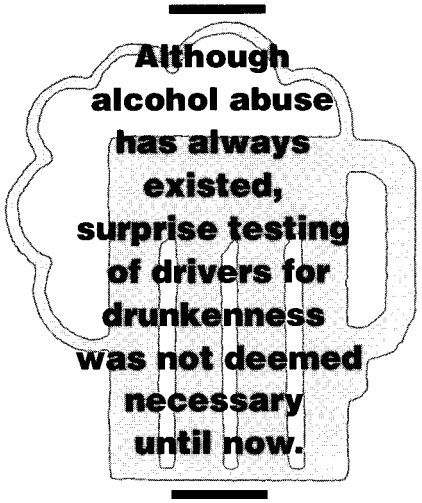
BY STANTON PEELE

On August 28, a New York City subway motorman failed to slow at a switch and derailed his train, killing five passengers and injuring another 200. It was the worst New York subway disaster in 63 years. The driver, Robert E. Ray, had a .21 blood alcohol level hours after the crash. According to police, Ray admitted he had been drinking all day before going to work on the night shift and that he was asleep at the throttle when the train hit a switch at many times normal speed. He has been indicted on five counts of second-degree murder.

The day after the accident, the New York Metropolitan Transportation Authority (MTA) announced a program of random drug and alcohol testing for its subway crews and bus drivers. The transit union, Transport Workers Local 100, accepted the program after having strenuously opposed such testing for years. If it hadn't, the union would have risked being seen as insensitive to the danger public-transit riders face every day. Yet, notwithstanding the August accident, intoxicated transit drivers may not be a very present danger to New York subway riders. After all, the New York City transit system is immense (including 600 subway trains and 2,900 subway operators), and this accident stands out as unique in recent memory.

Nonetheless, the image of the intoxicated motorman fuels the juggernaut of drug and alcohol testing. Perhaps, New Yorkers fear, the rising drug tide has increased the risk of accidents caused by intoxicated subway operators. Early news reports mentioned that an empty crack vial had been found in the operator's compartment. But Ray tested negative for illegal drugs. And although alcohol abuse has always existed, surprise testing of drivers for drunkenness was not deemed necessary until now.

Is random drug and alcohol testing the best way to prevent horrible, if isolated, public-transit accidents? Actually, MTA policies already in place at the time of Ray's accident permitted some drug and alcohol testing. For example, transit workers could be tested for alcohol if their actions aroused the suspicion of a supervisor. Ray's behavior seemed to justify such testing. Indeed, Ray had given any number of indications that he should not have been driving a subway, that night or at any time:


Although alcohol abuse has always existed, surprise testing of drivers for drunkenness was not deemed necessary until now.

- Ray reported for work 15 minutes late, wearing tennis shoes instead of the regulation hard-soled shoes, for which the dispatcher failed to cite him.
- The dispatcher is responsible for inspecting the fitness of train operators but apparently did not notice Ray was heavily intoxicated. (According to a driver, the dispatcher appeared angry with Ray but took no action.)
- Ray's record during the previous year was marked with problems, including three suspensions (following two warnings) for lateness, absence, and running a red signal. These violations should have signaled the system to take action.
- The night of the accident, Ray screeched to stops past station platforms and sped wildly. An off-duty transit worker riding the train said he and the conductor warned Ray about his erratic driving. But the conductor did not radio the transit command station about Ray's recklessness, as he was required to do.
- Several drivers interviewed by *The New York Times* said it was common knowledge that Ray drank on the job and reported for work drunk.

In light of this information, will random testing safeguard New York City transit riders? Random tests carried out over such a large work force would not be likely to find a driver who showed up for work intoxicated unless he or she did so regularly. Moreover, definitive tests of drug and alcohol use yield results hours or days after testing, meaning the tests would not prevent operators from driving intoxicated on the occasions when they were tested.

Why are transit authorities in such a hurry to implement a method of monitoring driver intoxication that is less reliable and more expensive than reports from coworkers, examination of previous job performance, and scrutiny from supervisors? Despite the great concern for rider safety the testing program supposedly indicates, the system repeatedly ignored obvious signs that Ray was not performing adequately the night of the accident or in general. Drug testing seems primarily a public-relations effort aimed at alleviating anxiety.

But less dramatic reforms would be far more effective at actually reducing the risk of another accident. The MTA needs to make sure all transit workers understand that drunken subway operators will not be tolerated and that employees are required to report immediately that a motorman is visibly intoxicated or otherwise unfit to drive. Supervisors, dispatchers, and conductors should know that identifying and halting intoxicated or unsafe drivers are imperatives and that they may be fired for not doing so. Meanwhile, transit-authority regulations should be sufficiently

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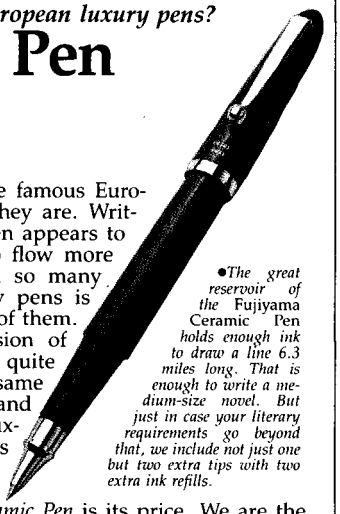

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rigorous that unreliable drivers are quickly weeded out. Such policies are already on the MTA's books, even though they were not enforced in Ray's case.

Randomly testing all workers for drugs and alcohol appears to be an easier alternative than implementing common-sense organizational procedures. Based on last summer's accident, the MTA and the public are ready to indiscriminately invade the privacy of thousands of drivers in the New York transit system who would never consider working while drunk or on drugs. The Fourth Amendment guarantees that Americans will not be subjected to capricious searches. The Supreme Court has ruled that urine testing is a search by constitutional standards, but that such searches may be justified in the interest of public safety.

In the current environment, it's easy to argue that the clear and present danger of on-the-job drug use outweighs constitutional guarantees. And the most frightening example of such danger is the intoxicated train motorman, pilot, or bus driver. As far as we can tell, however, transit crashes caused by intoxicated drivers and pilots are extremely rare events. According to the FAA, no fatal accidents involving a major commercial airline have ever been traced to a drunken pilot. In 1989, the National Transportation Safety Board ruled for the first time that drug use contributed to a commercial aviation accident—the 1988 crash of a Continental Express plane in Colorado, in which nine people died. But the board did not claim that drug use *caused* the accident. The levels of cocaine in the pilot's bloodstream were so low that it seemed unlikely that he was intoxicated at the time of the crash.

Thus, aside from constitutional issues, we must address the question of whether drug-testing programs for pilots or drivers address real dangers through means that are cost-effective, sensitive, accurate and timely enough to make a difference. The government's own research suggests that they don't. A 1986 study by the General Accounting Office found drug tests for federal workers costly and ineffective, with false positive rates of from 5 percent to 20 percent.

NEW**YORK**

One alternative to drug testing is to have workers perform motor-skill and hand-eye coordination tasks on a computer before allowing them to drive. Such "critical tracking tests" avoid the constitutional problems of drug testing and are directly relevant to the task of operating a vehicle. But these tests would be time-consuming, and they could be ignored. Why would MTA supervisors who failed to question an intoxicated and erratic driver be more likely to administer and evaluate critical tracking tests daily to thousands of drivers?

Before searching for high-tech alternatives, the MTA and other transit authorities might try to ensure that employees follow existing procedures for catching accident-prone, intoxicated, and malfeasant drivers like Ray. To its credit, the MTA followed its quick announcement of a random drug-testing program with a more reasoned, organization-wide response a week later. Along with drug testing, the program includes computerizing disciplinary records to flag problem drivers, using film of the Ray train wreck to underline to MTA personnel the importance of reporting intoxicated drivers, reviewing employee selection and training procedures, and installing stop signals before switches. Future aims include developing track sensors to automatically control train speed.

The question remains whether this overall program—which will cost $700 million in the next year—is actually the most cost-effective way to protect rider safety. Expensive components such as track sensors and drug testing must be balanced against the replacement of track and other deteriorating equipment that may ultimately be more central to the safety of the system. And in the final analysis, the overwhelming majority of transit employees around the country accept the responsibility not to drive public conveyances while intoxicated. Using a scatter-shot approach such as random drug testing to catch the few who don't may entail sacrifices that substantially outweigh any benefits.

Contributing Editor Stanton Peele is a psychologist and addiction researcher.

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SOCIALISM'S LAST LAUGH

In New York City today, there is no law so untouchable, no topic as emotionally charged or closed to discussion as Rent Control. So when Scott Gardner wrote a book critical of the Big Apple's fifty-year-long "temporary wartime measure," he violated a sacrosanct taboo.

To make matters worse, his book, "*Live Rent-Free For Life,*" is not a dull economic text but a hilarious satire that dares to poke fun at the "humanitarian" system that was supposed to help the poor, but has turned into a free handout for the rich. As a result, this incisive little book has turned into a great big embarrassment for New York's lawmakers and a great big laugh for the rest of the country. But Gardner makes his point with such engaging good humor and comic inventiveness, you actually enjoy the devastation he wreaks among landlords, tenants, bureaucrats, and politicians alike.

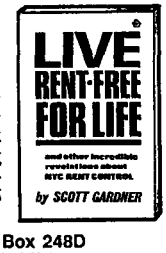
Inspired by his ten year experience as owner of a small Manhattan townhouse, Gardner discovers a fertile field of comedy no one has ever tapped, and for the first time, reveals the wild and wacky world of rent control in all its bizarre absurdities.

His chapter titles alone are inspirations: "Deck The Whores With Boughs of Folly," outlines a tongue-in-cheek proposal to eliminate the world's oldest profession by regulating hooker's fees like rents; "How I Turned $100,000 into $1.25 By Investing In Real Estate In My Spare Time," teaches a fool-proof method for retiring directly to the poorhouse; "A Great Leap Backward," reveals the city's 5.1 billion dollar plan to move its poorest citizens UP to grinding, abject, poverty; and in "An Endangered Species," Scott Gardner reveals how irate Brooklyn tenants who compared their hated landlord, Morris Gross, to a reptile, did the nation's reptiles a "gross" disservice.

Among many other riotous tidbits read "Beyond Chaos," a merciless description of a housing agency completely bogged down in inefficiency and red tape, and how this chaos makes it feasible and legal for every New York tenant to stop paying rent forever. And in a diabolical socko finish, "Mein Krampf," delivers a monologue strangely reminiscent of Hitler's rantings as it describes rent control's "final solution" to the city's age-old "landlord problem."

"*Live Rent-Free*" is the first book ever written that rips the mystique away from the Big Apple's liberal facade and exposes the rotted core of what is perhaps New York's most destructive, possibly its costliest, but certainly its dumbest law.

"At a pivotal time in our history," writes Gardner, "when harsh economic reality has made Marxist dogma harder to peddle than radioactive waste, this country's putrid pockets of rent control may very well be the last surviving examples of socialistic claptrap left in the civilized world." The book all America is cheering over. At your local bookstores or send $11.95 (includes shipping) to:



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THE IMPOSSIBILITY OF SOCIALISM

BY THOMAS W. HAZLETT

I was in the midst of my standard evening workout, punching the couch cushions and stretching for the Sony remote while curling a bottle of Bud Light, when the 20th century was carefully encapsulated on "MacNeil-Lehrer." In a news segment ambitiously entitled, "Communism: What Went Wrong?", the PBS news hounds dug deep for the Real Story Behind the Headlines.

They hit pay dirt when they shoveled up Sen. Daniel Patrick Moynihan. The former Harvard professor was thoughtful in explaining that little glitch in the communist system. No, better administration would not likely have solved the problem, he lectured. And it probably wasn't just bad luck that Soviet leaders kept insisting on jailing political opponents, cutting deals with Adolf Hitler, laying millions of innocents to waste, and just generally ruining life for citizens of any country within driving distance of a Soviet tank. No, there was a fatal flaw from the outset, said Sen. Moynihan. "I think you have to go back to what the Austrian economists were saying about the impossibility of socialist planning, to the need for market prices to allocate resources," he lisped to his prime-time audience.

That wacky old Ludwig von Mises had stumbled upon the fly in the communist ointment way back in his 1920 tome *Socialism*. Ludwig's model described government bureaucrats as flying economically blind, having no real prices to compare when shopping for capital goods, all of which were owned by the state; fellow Vienna Circle economist F.A. Hayek later showed that government planners would grow increasingly desperate in their efforts to pound odd-sized individuals into government-issue boxes. But the Austrian critique of "the impossibilities of socialism" was thought to be only a theoretical proof. So we ran some experiments.

Now we can tabulate the data on our capitalist Apple: a few million crushed in the Russian Revolution and War Communism, 10-15 million kulaks obliterated in forced collectivization, mass terror in the Party purges, World War II (which essentially began when Hitler and Stalin secretly divvied up Poland), snatching up the Baltics, the gulag archipelago, the persecution of the dissidents.... all to produce a living standard that makes suburban Cleveland a place Robin Leach might take the Soviet proletariat to catch a glimpse of their Champagne Wishes and Caviar Dreams. Before our Mac melts its mouse, I think we'd better cut the experiment right about now.

So do communism's guinea pigs. The Western press, however, covered the news event of the century with a vacuous self-absorption unusual even for journalists. In the days following the putsch that pooped and the sensational collapse of the Evil Empire, *The European* (an English-language newspaper circulated throughout the continent) ran the following stories: "Tense Bush Tries to Prop Up Gorbachev"; "Fears Grow as the Empire Tears Apart"; "Ukraine Fears for Its Future." (Those poor Ukrainians, having to face life without all that emotional support from Moscow.) A common and ridiculous theme was to put the burden of proof on Boris Yeltsin to convince us he was not a populist demagogue—an unusual level of concern, given the West's willingness to peacefully co-exist with the boorish Soviet Socialist alternative.

The grand prize for missing the forest goes to *The International Herald-Tribune* for its scare tale, "EC's Identity Crisis: Beseiged By East, Unity is Threatened." On the seminal event of our time—an archenemy with 50,000 nuclear warheads aimed at our skulls by cranky Vodka-holic generals surrenders without the West missing so much as a commercial break—this is the angle the pundits come up with? When the cure for cancer is discovered, prepare for the headline: "Millions Panic Over How to Fill Time in Their Post-Cancer Years."

We outsiders are well equipped to stake out positions on the USSR that have far more to do with our sociopolitical fantasies than with, for instance, the USSR. American conservatives salivated for four decades over their wispy vision of a vast monster with machine-like abilities to wreak havoc and ravish our American way of life. Go to any John Birch Society bookstore, and you'll see the shelves creaking with tomes on the awesome military might of the Soviet Bear. The reality that this ferocious beast was not all that reliable—it could not even be ordered to Moscow (!) to apprehend Yeltsin without defecting—never dampened the thrill of what must have been like a peep show for politically active ex-Marines.

The radical left, of course, has never passed up an opportunity to advance its own agenda on the carcasses of their fellow man, and they screamed with delight at the invention of theories detailing how U.S. aggression was the root of all Soviet surliness. It will be cute to tune in Professor Noam Chomsky lecturing C-SPAN audiences with newly deconstructed theoretical explanations for how Ford Aerospace and the CIA left the Soviets with no choice but to seize the Uzbek Republic for their own.

Trouble is, sometimes one of these kooky professors gets it dead-on right. If we had taken Dr. Mises at all seriously, a century of blood might have been sidestepped. I suggest we examine the results of the socialist experiment in some detail and save a billion or two test humans some ugly trouble next century. But, just in case, I'm putting my name in right now for the control group.

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.

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ESSAY

Choose ONE of the following works and write an essay on it using the Emerson quote as a theme.

- Ray Bradbury, *Fahrenheit 451*
- Bertolt Brecht, *Galileo*
- Zora Neale Hurston, *Their Eyes Were Watching God*
- Ayn Rand, *The Fountainhead*
- Evgeni Zamyatin, *We*

Essays should deal with the *ideas* in the work, although form, characterization, trope, metaphor, etc., may be discussed relative to the author's development of ideas. Essayists are encouraged to develop a thesis with respect to the theme quote, and not simply to describe its applicability to the selected work.

SELECTION OF WINNERS

Essays will be judged on the following criteria:

- quality of writing (clarity, organization, style, etc.)
- persuasiveness
- grasp of theme
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RULES

1. Entrant must be an undergraduate student at an accredited university during the 1991-92 school year.
2. Essay must be no less than 2,000 words and no more than 3,000 words.
3. Essay must be the work of a single individual.
4. Essay must be submitted in English, typewritten, double-spaced.
5. Entry must include a cover sheet providing the student's **name, mailing address** and **phone, date of birth, school, major, year of graduation,** and **career interests**.
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7. Decisions of the judges are final. The Review Committee reserves the right not to award a prize.

DEADLINE

Entry must be postmarked by **March 2, 1992**, or sent by private carrier for delivery by **March 6**.

Submit completed entry, with cover sheet, to Fiction Essay Contest, Institute for Humane Studies, George Mason University, 4400 University Dr., Fairfax, VA 22030-4444. To verify receipt of your entry, include a stamped, self-addressed postcard or envelope.

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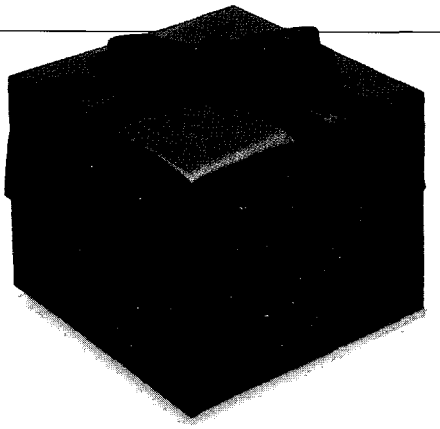

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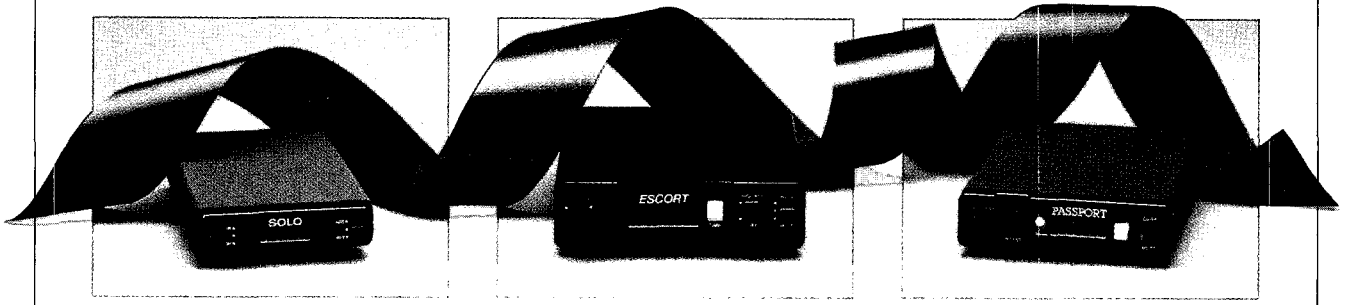

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